

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
AT KAMPALA (FAMILY DIVISION)
CIVIL SUIT NO. 135 OF 2015**

- 1. **EMILY DRANI**
- 2. **BOB DRANI**
- 3. **CHARLETTE DRANI**
- 4. **ESTHER DRABILE DRANI**
- 5. **JANE DRANI**
- PLAINTIFFS**
- 6. **STEPHEN DRANI**
- 7. **VICTORIA DRANI**
- 8. **CLAIRE DRANI**

VERSUS

- 1. **ANTHONY MARRI. K. DRANI**
- 2. **MAUREEN OMARA**
- DEFENDANTS**
- 3. **HELLEN BUSI**
- 4. **WYCLIFFE MULINDWA**

BEFORE: HON. JUSTICE SUSAN OKALANY

JUDGMENT

[1] The plaintiffs brought this suit against the defendants seeking for the following orders:

- a) A declaration that the 1st defendant is incapable of administering the estate of the late Charles Origa Futo Drani;
- b) The revocation of letters of administration dated 27th October 1998, issued to the 1st defendant by the High Court of Uganda;
- c) An award of general damages for the fraudulent sale of part of the estate of the late Charles Origa Futo Drani, which denied the beneficiaries of their rights thereof;

- d) The cancellation of all illegal transactions between the 1st defendant and the 2nd, 3rd and 4th defendants pertaining to the estate of the late Charles Origa Futo Drani;
- e) A permanent injunction restraining the 1st defendant from continued administration of the estate of the late Charles Origa Futo Drani;
- f) A directive compelling the 1st defendant to account for the administration of the estate of the late Charles Origa Futo Drani from 1998 to date;
- g) Costs of the suit; and
- h) Any other relief deemed fit by this honourable court.

BACKGROUND

- [2] The plaintiffs and the 1st Defendant are beneficiaries of the estate of the late Charles Origa Futo Drani, hereinafter referred to as the deceased. At the time of the deceased's death, most of the land he owned had not been transferred to his name.
- [3] The plaintiffs' case against the 1st defendant is that he has mismanaged the estate of the deceased since he became its administrator by virtue of the letters of administration issued to him by the High Court of Uganda at Kampala on 27th October 1998. The plaintiffs aver that the 1st defendant registered land comprised in Busiro Plot 37, Block 241 at Nsekwa Musisi in his name on 9th March 1999, instead of registering it in his capacity as administrator of the estate. It is alleged that he subsequently sold part of the estate land to the 2nd, 3rd and 4th defendants, leaving unsold, only Plots 47 and 50.
- [4] Furthermore, the plaintiffs claim that the 1st defendant has grossly mismanaged the affairs of the estate to their detriment by: selling land comprised in Busiro Block 241 Plots 12, 23, 41, 42, 47, 48 and portions of 50, belonging to the deceased's estate; renting out plots that are part of the estate for his sole benefit; failing to file inventories as is legally required; refusing

to account for the proceeds and income of the estate since 1998; and deliberately refusing to distribute the estate amongst its beneficiaries.

- [5] The plaintiffs' claim against the 2nd, 3rd and 4th defendants is that they connived with the 1st defendant to enrich themselves by purchasing land belonging to the estate of the deceased, despite the several warnings and the notices of intention to sue issued to them regarding the ownership of the suit land.
- [6] The 1st Defendant in his defence asserts that the 2nd, 4th, 6th, 7th and 8th plaintiffs are not beneficiaries of the estate. He denies participating in any fraudulent activities as claimed by the plaintiffs. He states that on the contrary, he had purchased produce and livestock, for the estate farm, which animals were of benefit to the plaintiffs whenever they visited the estate farm, since livestock would be slaughtered and feasted upon by them.
- [7] The 1st defendant also states that Plot 13 of Block 241 was given as security to a one, Damanico for an outstanding debt incurred by the 1st defendant to run the affairs of the estate.
- [8] He explained that the 1st administrator of the estate of the deceased - the late Patrick Futo Drani, (hereinafter referred to as the late Drani) acquired a loan from the 4th defendant - Mulindwa in 1998 and used the certificate of title for Plot 41 of Block 241, along with duly signed transfer forms for the said plot as security for the loan. He subsequently surrendered the said certificate of title to the 1st plaintiff as well as the certificate of title for Plot 50 of Block 241.
- [9] The 1st defendant in his written statement of defence states that his renting out and/ or sale of *bibanja* was done to protect and monitor the boundaries of the estate by warding off encroachers and squatters. The funds received from the *bibanja* holders were used to reconstruct the family farmhouse together with the servants' quarters, to stock feeds and treat farm animals, which actions have benefitted the plaintiffs who also stay in the

farmhouse whenever they visit the farm. Some of the rental proceeds from the *bibanja* were shared amongst the beneficiaries. He contributed to the 2nd plaintiff's transport fare to Nairobi by buying him air tickets whenever he travelled to follow up on matters concerning the estate in Nairobi.

[10] The 1st defendant asserts that the transfer of the estate property to his name was done in good faith, without any intention to defraud the estate. He had declared the proceeds of the estate to family members at several family meetings, unlike the 2nd plaintiff who had failed to account for the proceeds of the sale of part of the estate in Nairobi and yet he had given him powers of attorney to represent the estate in the same matter.

[11] It is also his statement that an agreement was unanimously reached by the beneficiaries of the estate to sell part of the estate land measuring 100 acres to the 4th defendant to settle administrative debts that had been left unpaid by the previous administrator of the estate - the late Drani. He declared that he was not served with the notice of intention to sue in this matter.

[12] In a counterclaim against the plaintiffs, the 1st defendant/counter claimant states that since his hospitalization in 2013, the counter defendants without authority, assumed the administration of the estate, particularly the stone quarry, and appointed Wilson Lutwama alias Taata Sam, Dungu and Ivan to collect money raised from the activities of the stone quarry, without providing any accountability for the same. With the consent of other family members, he gave the 2nd counter defendant (Bob Drani) powers of attorney to find prospective buyers of the deceased's estate in Nairobi and make a report about the same in 2011. However, when the 2nd counter claimant sold some portions of the said estate, he retained the income, which has since not been accounted for and when the 1st defendant asked for accountability for that portion of the estate, he was ignored.

[13] He prayed for the following orders:

- a) That the counter claimants render an account for the proceeds of all monies they received from 2013 after his hospitalisation and money received from the sale of part of the estate in Nairobi in 2011;
- b) That costs of the counterclaim be awarded to him; and
- c) Any further and better relief as the court deems fit be awarded to him.

[14] The 3rd defendant in her written statement of defence denied the plaintiffs allegations and asserted that she had acquired a lawful *kibanja* interest on part of Plot 13 of Block 242 as well part of Plot 50 of Block 241 at Nsekwa Musisi, pursuant to a purchase by the 1st defendant as the registered proprietor, as shown in their sale agreements. She additionally acquired a *kibanja* interest on another portion of the suit land from a one, Robinson Sserugooti and a sale agreement was subsequently entered by the parties to that effect. She states that she is a bonafide purchaser for value without notice and has *busuulu* receipts to prove that she has been duly paying *busuulu* to the 1st defendant, who is the registered proprietor of the land. She had exercised due diligence before purchasing the land in issue, by involving the Local Council authorities as witnesses to the sale transactions between herself and the 1st defendant.

[15] She further averred that the plaintiffs were guilty of contributory negligence, since they admitted that they had discovered that their interests in the estate land were transferred into the name of the 1st defendant on 9th March 1999, but did not contest his actions. Since they did not take any steps to protect their interests then, they are estopped from claiming otherwise. She also states that in the event that the sale is found to be void, she would claim indemnification and general damages from the 1st defendant, because at the time she purchased the suit land, he represented that the suit land belonged to him and that he had the authority to sell and deal with it.

[16] She asserted that the plaintiffs are not entitled to the prayers sought and prayed that their suit be dismissed with costs to her. She further prayed that in the alternative, she be indemnified by the 1st defendant.

[17] In a joint scheduling memorandum, the parties raised the following issues for determination:

1. Whether the 1st defendant mismanaged the estate of the late Charles Futo Origa Drani
2. Whether the plaintiffs No. 2, 4, 6, 7 and 8 are beneficiaries entitled to prosecute the present suit;
3. Whether the plaint discloses any cause of action against the 2nd, 3rd and 4th defendant;
4. Whether the 2nd, 3rd and 4th defendants are liable for the acts and omissions of the 1st defendant as complained of in the plaint;
5. Whether the 2nd, 3rd and 4th defendants are bonafide purchasers for value without notice; and
6. What are the remedies available to the parties?

[18] When the matter came up for hearing, the 1st plaintiff testified as PW1. Maureen Omara the 2nd defendant testified as DW1, Alex Kiiza was DW2, Hellen Busi the 3rd defendant testified virtually as DW3, Wycliffe Mulindwa the 4th defendant was DW4 while the 1st defendant Anthony Marri Kinyatta Drani testified as DW5.

[19] The 1st plaintiff (PW1) in her witness statement, states that the plaintiffs and the 1st defendant are beneficiaries of the estate of the deceased. The late Drani was appointed to administer the estate of the deceased in 1984 and subsequently filed a partial inventory before his demise on 8th April 1998. After his death, the 1st defendant was granted letters of administration of the estate of the deceased by the High Court of Uganda on 27th October 1998, vide Administration Cause No.738/1998.

[20] According to PW1, the estate comprised of four hundred seventy (470) acres of land but the deceased had not transferred most of

his land into his name before his untimely death. When the 1st defendant became the administrator of the estate, he fraudulently transferred part of the estate's land comprised in Busiro Plot 37 of Block 241, at Nsekwa Musisi to his name on 9th March 1999, instead of transferring the said property in his capacity as administrator of the estate of the deceased.

[21] After the 1st administrator's death, the family and the beneficiaries of the estate in a meeting convened on 29th November 1998, agreed that only one hundred (100) acres of land comprised in Busiro Plot 37 of Block 241 should be sold to the 4th defendant to cater for the debts incurred by the late Drani (the 1st administrator), to redeem the mortgaged land titles as well as to address the issues of the estate in both Kenya and Uganda, including the reconstruction of the farmhouse. While they identified the 4th defendant as the potential buyer of the 100 acres of land, they did not meet him directly. Nevertheless, the 1st defendant connived with the 4th defendant and transferred one hundred and sixty (160) acres of land to the 4th defendant's company named A. Dean & Co. Limited. As a result, he redeemed the mortgaged land title for Plot 41, Block 241 from the 4th defendant.

[22] She further testified that the 1st defendant has since administered the estate to his sole benefit, by deliberately selling land comprised in Busiro Plots 13, 23, 41, 42, and 47, 48 and 50 of Block 241, and renting out part of the estate. The estate has further been mismanaged by the 1st defendant, who has done the following: allowed trespassers to occupy part of it; failed to file inventories of the estate as required; and refused to distribute the deceased's estate to the beneficiaries.

[23] The 1st defendant also sold part of estate land comprised in Busiro Plot 37 of Block 241, situated at Nsekwa Musisi to the 2nd and 3rd defendants, leaving residues of only Plots 47 and 50 on the said block. The 2nd, 3rd and 4th defendants were warned not to

purchase the suit land, but still connived with the 1st defendant and bought it.

[24] PW1 also stated that the plaintiffs consequently opened up a case against the 1st defendant vide CRB 448/2017 at the Wakiso Police Station for fraudulent disposal of the estate property. They agreed to incorporate a company named Drani Development Enterprises Limited to manage the estate of the deceased and collect revenue from the said estate.

[25] PW1 asserted that despite this ongoing court suit, the issuance of interim and temporary injunctions by this court, the 1st defendant is still in possession of part of the estate and has continued selling pieces of land, while backdating the sale agreements thereof and signing transfer forms, to facilitate possessing of land titles by his buyers and to defeat the court process. She proposed that the 1st defendant vacates the suit land since no beneficiary resides in it, until matters affecting the estate are fully resolved, because he has already sold estate property worth 500,000,000/=, but has nothing to show for it, having spent all the money he received from the said sales on alcohol and luxurious living.

[26] During her cross-examination, PW1 testified that since the 1st defendant took over the administration of the estate of the deceased, the cowshed in the estate farm has been reconstructed into a four-roomed house, fit for human habitation. A six-roomed servants' quarters was also built on the same land. The said houses were built on the instructions of the beneficiaries, with estate funds. The 2nd plaintiff oversaw the reconstruction process and their uncle John Bull conducted the reconstruction work for the said farmhouse.

[27] PW1 made sure that the house was connected to the electricity grid as per the instructions of the other beneficiaries. It was the 1st defendant who connected solar power to the house. A

fourteen (14) acre banana and cocoa plantation was established in the estate under her management.

[28] She stated that the 1st defendant was rearing geese and turkeys on the farm for his own benefit and not for the development of the deceased's estate, while the cows on the farm are the dowry paid for their sister Vicky Drani (the 7th plaintiff) and not the alleged livestock purchased by the 1st defendant to stock the farm. PW1 maintained that 1st defendant had not only failed to give a periodic account for the income derived from the estate but had also failed to record the expenses incurred by it.

[29] She averred that the 1st defendant was admitted to Nsambya Hospital in 2013 for three weeks and then committed to an alcohol rehabilitation centre for two months. During that time, she was instructed alongside Robert Drani (the 2nd plaintiff) to manage the estate by the rest of the beneficiaries and has done so to date. She asserted that she did not have the minutes of the meeting where the two of them were elected to administer the estate, since the communication was done via the WhatsApp platform. She however offered to avail evidence of the minutes of a meeting that was held by the beneficiaries in May 2016, when she was asked to account for the estate ever since she took over its management.

[30] Concerning the estate quarry, the 1st plaintiff testified that the estate hires out one hundred and fifteen (115) pits to pit holders who hire their own workers. Income amounting to five million shillings (5,000,000/=) is collected from the stone quarry every month. Part of the said income is used to pay workers in the estate's banana plantation and the remainder is banked on the family account at Centenary Bank in Wakiso. She is a signatory to that account alongside the 2nd plaintiff. The income from the estate is banked in the company's name (Drani Development Enterprises), where the estate beneficiaries are directors. The said company was incorporated in 2015 and it has since filed nil

returns with URA because it was not generating any profits, especially after paying the employees of the estate and maintaining the banana plantation. That is the reason she had only produced a bank statement for the period starting from 1st January 2018 to 18th October 2019.

[31] The 1st plaintiff elaborated that she is allowed to withdraw money from the company account on behalf of the 2nd plaintiff, since he has been pursuing his PHD in South Africa since 2018. However, she can only make any withdrawals with the consent of the other beneficiaries. She had not intermeddled or interfered in any way with estate property but had taken over the management of the deceased's estate. According to her, the management of the estate farm is a different thing from the administration of the deceased's estate.

[32] The current manager of the farm is a one Ali Mundera, since the previous farm manager - Wilson Lutwama, was fired from that position for engaging in fraudulent activities such as under-recording the trucks that came into the quarry to collect stones, hiring out pits to pit holders without informing the family and collecting money from the said pit holders without remitting it to the current management of the estate. The said facts were confirmed during a family meeting held with the pit holders.

[33] She estimated that an amount of twenty-five million shillings (25,000,000/=) was misappropriated by the said Lutwama in a period totalling to five years and above that he had managed the estate. After that discovery, the management of the estate was replaced and a new system of collecting and recording funds was introduced. A case was reported to the police against Lutwama who was given a grace period by the police to repay the misappropriated money, before the plaintiffs could proceed to prosecute him.

[34] The 1st plaintiff claims that a total of five hundred million Uganda shillings (500,000,000/=) was misappropriated from all the estate properties that were sold by the 1st defendant.

[35] She testified that after the 1st defendant's illegal sale of estate land in 2013, the family/beneficiaries of the deceased's estate put up a radio announcement warning the public to stop purchasing estate land. They put up a signpost at the entrance of the estate farm, warning purchasers against procuring estate land and also placed an advertisement in the New Vision newspaper, reiterating the same message.

[36] The 2nd and 3rd defendants were invited for a meeting on the farm alongside other *kibanja* holders and were informed that the land transactions entered between them and the 1st defendant were illegal, since he had not obtained the consent of the beneficiaries of the estate to transact and that the beneficiaries lodged caveats at the land registry in 2017, in respect of the land of the deceased's estate.

[37] It was the 1st plaintiff's testimony that the beneficiaries of the estate had verbally warned the public to stay off the land on the estate but later learnt of the sale of the land in 2014. The beneficiaries of the estate met with the 1st defendant and demanded that he stops selling estate land without their consent, but he ignored their demands. When the meeting between the plaintiffs and the *kibanja* holders in 2013 was held, she found out that the 3rd defendant had a claim to five (5) acres on a *kibanja*, having purchased the said land from the 1st defendant with sales agreements having been signed by the village defence secretary as well as the chairperson.

[38] The 1st plaintiff admitted that the beneficiaries of the estate did not act against the 1st defendant's actions for almost twenty (20) years, because they trusted him as their elder brother. That the 1st defendant was not a drunkard when they nominated him for appointment as the administrator of the estate. The

beneficiaries did not lodge caveats on the estate property before 2017, because they did not have money to do so.

[39] The 1st plaintiff criticized the purchasers of the estate land for not carrying out investigations to ascertain how the 1st defendant had obtained the said property, notwithstanding that he was the registered proprietor of the land on Plot 50.

[40] It was during the hearing of this suit that she got to know that the late Drani had sold Plot 41 to the 4th defendant in 1997, before the grant of letters of administration to the 1st defendant, although she had not yet seen any documentation confirming the said transaction. The certificate of title for Plot 41 of Block 241 was subsequently handed to her by the 4th defendant during the hearing of this suit.

[41] There are other *bibanja* holders on the estate, but the beneficiaries chose to sue the 2nd and 3rd defendants only, because they bought estate land registered by the 1st defendant, which transactions she knew were fraudulent and also because the said defendants bought land nearest to the family's residential home.

[42] The initial registered proprietor of Plots 47 and 48, Block 241 was Yerehiah Sebuliba, which plots the 1st defendant subsequently transferred in his name. Plots 43, 47 up to 50 of Block 241 are all registered in the 1st defendant's name. The said plots were originally mutated from Plot 37.

[43] Regarding the counterclaim, it was the testimony of the 1st plaintiff that she did not know anything about it, having only learnt that there was such a claim when she attended court to give evidence.

[44] She stated that the 2nd defendant only started constructing on the land she bought from the 1st defendant after this suit was filed, contradicting her earlier evidence when she estimated that the said construction started in 2014.

[45] In her re-examination, she admitted the fact that she had not frequently visited the estate land before 2013, as it was the 1st

defendant's responsibility to do so. The beneficiaries could not have stopped the 1st defendant from claiming that he was the sole owner of the estate since he did not invite any of them when he entered into agreements of sale with *kibanja* holders.

[46] She also testified that Plot 37, Block 241, later became known as Plot 50 of Block 241 and Plot 50 was further subdivided into Plots 47 and 48 of the same block. The 1st defendant was the registered proprietor of Plot 37. She wondered why he transferred land comprised in Plot 13, Block 241, registered in the name of Yeremiah Sebuliba, which is adjacent to Plot 37, to the 3rd defendant, when he (1st defendant) was not its registered proprietor.

[47] She maintained that the 4th defendant had admitted executing two sale agreements between himself and the 1st defendant, one for the 100 acres of land and the other one for 60 acres of land. The witness also maintained that the plaintiffs were contesting the additional 60 acres of land, which the 1st defendant had sold to the 4th defendant without their consent.

[48] She explained that 30,000,000/=, which accrued from the sale of the 100 acres of land was used for settling debts incurred by the late Drani and for paying school fees for the minor beneficiaries of the estate, as well as for paying some estate debts in Kenya. It was her evidence that part of that money, together with the deceased's East African Community dividends, were used to construct the farmhouse on the spot where the milking paddock used to stand.

[49] The 1st plaintiff additionally explained that she established the cocoa and banana plantations with income from the stone quarry, following a decision made by all beneficiaries.

[50] She also explained that the meeting held between the beneficiaries and all persons claiming an interest in the suit land was attended by the 2nd defendant and her late husband. At the said time, they had not constructed a house on the suit property.

[51] However, the witness subsequently contradicted herself when she later on testified that there was a structure on the plot sold by the 1st defendant to the 2nd defendant, when the said defendant showed the beneficiaries around the piece of land that she had bought from the 1st defendant.

[52] Maureen Omara testified as DW1. In her witness statement, she stated that she jointly purchased land from the 1st defendant comprised in Plots 13 and 50, Block 241 in Nsekwa Musisi, Mende parish, Wakiso District with her late husband Thompson Omara. Before the said purchases, they had ascertained that the suit land was registered in the 1st defendant's name. DW1 and her late husband additionally inquired about the ownership of the suit land from the neighbours to the suit land and were assured that the 1st defendant was indeed the sole proprietor and only occupant of it.

[53] William Musigire, the area Local Council 1 (LCI) chairperson of Nsekwa Musisi, Leo Sempijja, the area defence secretary and the area treasurer Christine Kyotera, who witnessed the sale transactions between the DW1 and her husband on one hand and the 1st defendant on the other hand, confirmed the 1st defendant's ownership of the land. DW1 and her late husband also purchased land from Richard Sendyowa who had earlier purchased it from the 1st defendant. In total, they bought ten (10) acres of the suit land.

[54] The witness insisted that they neither connived with the 1st defendant to defraud the plaintiffs nor did they know that he was merely an administrator of the estate of the deceased and that the suit land constituted part of the estate of the deceased. They were thus unaware of the 1st defendant's fraudulent dealings in his capacity as administrator of the deceased's estate.

[55] She also testified that the 7th Plaintiff - Victoria Drani and the 1st defendant subsequently asked her to give them back one-half of the 10 acres of land that she had purchased from the 1st

defendant and retain the other half. She asked them to draft a consent agreement to that effect, which she subsequently signed on 25th February 2020. The 7th plaintiff and 1st defendant got a surveyor to confirm if the land indeed measured 10 acres, so that it could be equally divided. The surveyor found out that the land measured only 8 acres and 7 decimals, Njovu housing estate having encroached on the remaining part of the land in issue, which encroachment extended to part of the house that she had constructed with her late husband as their residence.

[56] In her cross-examination, she reiterated her evidence in chief and further testified that the land she bought from the 1st defendant was acquired in parts. After completing payment for the suit land, the 1st defendant did not give them the title for the land purchased, claiming that it was a *kibanja* holding, which they had to convert to a leasehold. They were assured by the 1st defendant that the *kibanja* belonged to him, since he inherited it from his deceased father, but that they were never told who the rightful owner of the *Mailo* interest was. Her husband died before the 1st defendant could give them a land title for the land he had sold to them.

[57] That along with other purchasers of the property on the suit land, they were subsequently notified by the plaintiffs through written notices that the land they had purchased from the 1st defendant did not belong to him. She maintained that while all purchasers of the suit land were given written notices, she and her husband were never given any written notices about the land they had purchased.

[58] She also maintained that she did not hear any radio announcements warning potential buyers against purchasing the suit land, but instead, it was the 1st plaintiff and other members of the Drani family who summoned her and other purchasers to a meeting and informed them that the suit land did not belong to the 1st defendant but to all beneficiaries of the estate of the

deceased. There were more than one hundred (100) purchasers of the suit land called to the said meeting.

[59] According to the witness, the area LC1 chairperson - William Musigire wrote some of the sale agreements, for instance, **Exhibit D4(a)**. In the sale transactions that she and her husband entered into with the 1st defendant, sometimes the LCs would draw the sale agreements in the Luganda language, but in some transactions it was the 1st defendant himself who drew the land sale agreements, which agreement would be in English, such as **Exhibit D3**.

[60] DW1 insisted during cross-examination that she had not sold any piece of land that she originally purchased from the 1st defendant, but that she had only agreed to give 7th plaintiff, who is one of the plaintiffs in this case, part of her land, in partial settlement of this dispute, as evidenced by the agreement admitted in evidence as **Exhibit D1**. According to her, the two of them would each take 4 acres and 3.5 decimals in settlement of the matter and the 1st defendant had assured her that the rest of the plaintiffs had consented to their settlement in a WhatsApp conversation between him and them. The witness made sure that the 1st defendant had expressly agreed to the consent settlement made between herself and the 7th plaintiff and assured her that she would retain half of the land she had purchased from him.

[61] DW1 asserted that the plaintiffs summoned the purchasers of the suit land to attend a family meeting long after she and her late husband had concluded their dealings with the 1st defendant prior.

[62] She admitted knowledge of the court order restraining the respondents, their agents and servants from selling, disposing and taking any action that would be detrimental to the interest of the applicants in the suit land, although she was unaware that the 1st and 5th plaintiffs had been made the administrators of the

estate of the deceased. She prayed that the court finds that the land in issue was lawfully obtained by her.

[63] Alex Kiiza, the son of the 3rd defendant, testified as DW2. He stated that he was a witness to the land sale transaction of 7th August 2013, where the 3rd defendant bought four (4) acres of land comprised in Plot 13, Block 242, from the 1st defendant, who signed as the vendor/landlord of the land. The transaction was also witnessed by a one, Simon Kintu and the LC1 chairman of Nsekwa-Musisi village.

[64] The 3rd defendant paid *busuulu* on that very day and nobody objected to the said transaction. He also witnessed another purchase of one acre of land comprised in Plot 50, Block 241, Wakiso District, by the 3rd defendant from the 1st defendant and that sale agreement was also witnessed by the area local leaders, namely: Leo Sempijja - the area LC1 defence secretary, Christine Kyotera the area LC1 treasurer and Salongo Musigire William who was the area LC1 chairperson.

[65] The 3rd defendant also bought a *kibanja* measuring one acre, from another *kibanja* holder called Robinson Sserugooti in his presence. The 1st defendant consented to the said sale and signed the sale agreement as a witness, alongside the area defence secretary, Leo Sempijja, the treasurer, Christine Kyotera and the chairperson, Salongo Musigire William.

[66] DW2 asserted that the 3rd defendant lawfully acquired interests in the suit land from the 1st defendant who has been its registered proprietor since 1999.

[67] During his cross-examination, he confirmed his evidence in chief. He additionally stated that Plot 13, Block 242 is registered in the 1st defendant's name and a copy of the title was shown to the 3rd defendant, who was in possession of the said copy.

[68] The 3rd defendant carried out a search at the Wakiso land office, which established that the 1st defendant was the registered proprietor of Plot 13 of Block 242. He conceded that he was not

present when the said search was conducted, neither did he see the copy of the search report obtained by the 3rd defendant after the said search. The 3rd defendant is still in possession of the 6 acres of land that she had bought from the 1st defendant, although she does not possess a certificate of title for the said land.

[69] The family of the deceased held a meeting in 2018, chaired by the 1st plaintiff concerning the suit land, to which the 3rd defendant was among the invited *kibanja* holders of the suit land. During the said meeting, the persons who had purchased the suit land from the 1st defendant were informed that they had wrongly purchased the land, since the 1st defendant acted alone without the consent of the other beneficiaries of the estate. The 1st plaintiff advised the said purchasers to vacate the land because the transactions between them and the 1st defendant were illegal. The beneficiaries of the estate proposed that if any of the *kibanja* holders relinquished a portion of their purchased land to the estate, they would be accepted as owners of the rest of the *kibanja* and certificates of title for the rest of the purchased land, would be processed for them.

[70] DW2 was sceptical about the beneficiaries' suggestion, since they had just informed the *kibanja* holders that their transactions with the 1st defendant were void for illegality. Lastly, he had not heard about any notice barring buyers from constructing on the suit land.

[71] The testimony of the 3rd defendant Hellen Busi who testified as DW3 supports DW2's evidence. In her witness statement, she stated inter alia, that she met the 1st defendant when she was looking for land to buy in 2013. He expressed to her the fact that he had land situated in Wakiso District, which he was desirous of selling.

[72] After inspecting the said piece of land and being pleased with it, she asked the 1st defendant for copies of the land titles of the

land to carry out further due diligence and he obliged. The 1st defendant was duly registered on the certificates of title as the proprietor, which information she verified after she made a search at the land's registry.

[73] She was never notified about the reality that the land she was buying did not belong to the 1st defendant and had assumed that the offer made to her by him was lawful, since other people were also buying land from him.

[74] Moreover, the 1st defendant assured her that the area LC1 chairperson would witness the sale transaction between herself and him. On 7th August 2013, she bought 4 acres of land from the 1st defendant, comprised in Plot 13, Block 242. She subsequently paid *busuulu*, occupied the land and utilized it without any objections from the plaintiffs. The sale agreement was witnessed by Kintu Simon and the LC1 chairperson of Nsekwa-Musisi and Ssalongo Musingyire William on the 1st defendant's part, while her witnesses were Kizza Alex (DW2), Birungi Maria Laboka and Mrs Omara Maureen.

[75] She also lawfully bought land from the 1st defendant, comprised in Plot 50, Block 241 on 10th September 2013 and the sale agreement was witnessed by the area LC1 members, to wit: Leo - the defence secretary, Kyotera Christine - the treasurer and Salongo Musigire William - the chairperson.

[76] After obtaining the consent of the 1st defendant, she bought another piece of land from a one, Robinson Sserugooti on 4th October 2013. The 1st defendant subsequently signed the sale agreement between the parties in that transaction, consenting to the said transaction. The same members of the area Local Council witnessed the sale.

[77] She maintained that she had lawfully acquired land from the 1st defendant, who was the registered proprietor thereof and had never received notice from the plaintiffs that the suit land was estate property that was not available for purchase. She

regularly paid *busuulu* as evidenced by receipts issued to her on 7th August 2013 and 16th May 2013, exhibited as **Exhibit D10** and **Exhibit D13** which were acknowledgements of her payments. She considered herself a bonafide purchaser for value without notice, since the 1st defendant held himself out as the owner of the suit land and was confirmed as the registered proprietor after all due diligence.

[78] According to her, the plaintiffs having discovered that the 1st defendant had registered his name as the proprietor on 9th March 1999 are estopped from claiming otherwise, since they did not take the requisite steps to protect their interests.

[79] DW3 attended a meeting called by the 1st defendant on 6th May 2018, to discuss the dispute concerning the land. The said meeting was adjourned because one person did not turn up. Subsequently, a committee was formed by the purchasers of the suit land, with the intention of meeting the family. About fifty (50) people turned up for the meeting that was subsequently called, in which the rights of *kibanja* holders were discussed.

[80] During her cross-examination (conducted via zoom, since the witness was testifying from Canada), she restated her averments in her evidence in chief and further stated that she left the search report she received for Plot 13, Block 242 in Uganda. She explained that in paragraph 5 of her witness statement, she meant that she had only bought a *kibanja* holding on Plot 13, Block 242.

[81] The witness however contradicted her evidence in chief when she stated that she did not know that Plot 13 of block 242 was not registered in the 1st defendant's name. In her written statement, she stated that she had established upon conducting a search at the land registry that the 1st defendant was the registered proprietor of Plot 13, Block 242.

[82] DW3 testified additionally that she was called to a family meeting in 2016, by the plaintiffs. The purpose of the said

meeting was to ascertain the person from whom the purchasers of the suit land had bought land from and to inform them that their purchases were void. With the exception of being allowed to farm on the land, they were warned against making any further developments on the land in dispute. She maintained that she had not received any warning letters from the area local leaders against purchase of the land.

[83] In her re-examination, DW3 affirmed that after acquiring the land, she immediately constructed a house before the above-mentioned court injunction was issued. She insisted that she had not met the siblings of the 1st defendant before purchasing the disputed land and reiterated her testimony that she was invited for a meeting by the plaintiffs, in 2016, long after she had bought her portion of the suit land.

[84] Wycliffe Mulindwa (4th defendant) testified as DW4. In paragraph 2 of his witness statement, he averred that the late Drani mortgaged land comprised in Plot 41, Block 241 to him on 29th October 1997, for 3,325,000/= and subsequently passed to him, the original certificate of title. The late Drani further executed transfer forms as security for the said loan, but died before the loan was repaid. DW4 did not however, transfer the certificate of title of the mortgaged land to his name.

[85] After the demise of the late Drani, the 1st defendant approached him and introduced himself as the late Drani's brother. He informed him that the land that was mortgaged to him by his said late brother formed part of the deceased's estate and the family was heavily relying on it for its subsistence. The 1st defendant proposed to give him land that is adjacent to Plot 41, Block 241, in exchange for the mortgaged land, which land was bigger and more economically viable than Plot 41. The 1st defendant additionally proposed to sell him a plot of land, to raise money for his use and that he would surrender the land comprised in Plot 41 to his siblings for their sustenance.

- [86] He agreed with the 1st defendant's proposition and returned the certificate of title of the said land to the 1st defendant. On 19th March 1999, the 1st defendant sold to him 100 acres of land comprised in Plots 5 and 37 of Block 241 at an agreed consideration of thirty million shillings (30,000,000/=), which amount he paid fully. DW4 then sold off all his interests in the said Plots 5 and 37 to M/S A. Dean, his company. His company further bought Plots 46 and 49 of Block 241, from the 1st defendant. He subsequently sold off all his plots to the Njovu housing estate. As a result, he has neither proprietary interest in the area nor ownership of any properties described in the plaint.
- [87] He declared that this case is purely one of a family conflict, in which he should not have been involved. He declared that the suit does not disclose any cause of action against him and that the prayers in the plaint are not directed towards him. DW4 confirmed that the 1st defendant sold to him 100 acres comprised in Blocks 5 and 37, but during the transfer of the titles, the plot numbers changed to Plots 46 and 49.
- [88] During his cross-examination, DW4 reiterated his evidence in chief and testified further that the late Drani mortgaged land comprised in Plot 41, Busiro Block 241, measuring nine (9) hectares as security for a loan of 3,325,000/= which he advanced to him. The late Drani gave him a post-dated cheque as payment for the mortgage but he had not presented the said cheque to the bank at the late Drani's behest. DW4 was supposed to transfer the said land to his name, in case the post-dated cheque bounced, but decided against it, even though the transfer forms for the mortgaged land had been duly filled.
- [89] The witness stated that it was Counsel Agaba of Agaba & Co. Advocates who introduced him to the late Drani. He denied receiving 3,325,000/= from the said law firm. He asserted that he had never been approached by the family members of the late Drani to discuss Plot 41.

- [90] He testified that he handed back the certificate of title for Plot 41 to 1st defendant in the said defendant's individual capacity and not as the administrator of the estate.
- [91] He stated that he was introduced to the 1st plaintiff when she went to his office about ten years ago, to discuss matters concerning the administration of some of the property of the deceased's estate. He assured her that he had nothing to do with the estate. According to the witness, when he met the 1st plaintiff, he had already acquired the disputed plots from the 1st defendant.
- [92] DW4 testified that he could not remember what he spoke with the 1st plaintiff about. He did not also remember giving her any documents. He declared that if the said plaintiff's assertion was that in their meeting, she requested for **Exhibit D17** (which is the land sale agreement made between himself and the 1st defendant for Plots 5 and 37) and **Exhibit D18** (which is the agreement made between M/S A. Dean & Co. Ltd and the 1st defendant for Plot 48), he must have given the said documents to her because he had absolutely nothing to hide.
- [93] It was his evidence that he bought 100 acres of land from the 1st defendant on 3rd August 1999 as established in **Exhibit D17**, another forty (40) acres of land from the 1st defendant as shown by **Exhibit D18** and more 20 acres of land were given to him by the 1st defendant as consideration for 9 hectares of land on Plot 41, which the late Drani had given to him as security for the loan. There was no agreement in respect of the 20 extra acres of land.
- [94] He further stated in his testimony that Plot 46 was registered by the 1st defendant on 14th April 1999 and transferred to M/S A. Dean & Co. Ltd on the same day. Plot 49 was also registered by the 1st defendant on 26th May 2000 and transferred to M/S A. Dean & Co. Ltd on the same day. The agreement of 3rd August

1999 (**Exhibit D18**) was made between the 1st defendant and the company.

[95] The 4th defendant stated that he owns M/S A. Dean & Co Ltd. jointly with his wife and that they own land through the said company.

[96] In his re-examination, he testified that he is the majority shareholder in M/S A. Dean & Co. Ltd, which bought land from the 1st defendant.

[97] The 1st defendant, Anthony Marri K Drani testified as DW5. The gist of his testimony agrees with the testimony of the 1st plaintiff as well as what the rest of the defendants stated concerning the land sale transactions that he had concluded with them.

[98] He testified *inter alia* that his administration of the estate has always been for the benefit of the deceased's beneficiaries. He denied the allegations of gross mismanagement of the estate made against him by the plaintiffs. He explained that the land comprised in Plot 13 of Block 241, was given by him as security to Damanico, when he obtained a loan from the said Damanico to run the affairs of the estate.

[99] He rented out and sold some *bibanja* to protect the estate land from squatters and encroachers since the *bibanja* holders would assist in monitoring the estate. He gave the 2nd plaintiff authority through a power of attorney dated 22nd March 2011, to administer the estate in Nairobi Kenya, pay debts outstanding on the said property and find buyers for the same. Consequently, the 2nd plaintiff travelled to Nairobi several times.

[100] He transferred some of the estate land into his personal name only for the benefit of all beneficiaries. He did not know the difference between transferring land into his personal name and transferring land in his name as an administrator of the estate of the deceased. He blamed his confusion on the lack of legal counsel at the time he assumed the administration of the estate. Nevertheless, he felt that the manner in which he had

transferred estate land was not detrimental to the estate, since he was managing it for the benefit of all beneficiaries and it was never his intention to defraud the estate.

[101] He used the proceeds of the estate to reconstruct the family house and the servants' quarters. He bought livestock as follows: eight (8) cows, five (5) goats, thirty (30) pigs as well as twelve (12) turkeys and several local chicken in the years between 2000 to 2013. He also bought animal feed and incurred treatment expenses in respect of the said livestock. He maintained a good number of farmworkers, whom he paid salaries from the income of the estate. He planted and maintained a plantation containing bananas and other crops for free consumption by the plaintiffs and the estate's farmworkers.

[102] He declared that the rest of the proceeds of the estate were shared among the beneficiaries of the estate, such as facilitating the air travels of the 2nd plaintiff to travel to Nairobi, to monitor the estate property in Nairobi.

[103] He convened many family meetings on various occasions and shared updates about his administration of the estate with the plaintiffs. In fact, it was in one such meeting that an agreement was unanimously reached that part of the estate be sold to the 4th defendant, to settle the debts left by the previous administrator.

[104] He asserted that if there was any mismanagement of the estate, then the 1st and 2nd plaintiffs who were responsible, having failed to account for revenue collection from the stone quarry, since they assumed the administration of the estate, without his consent, when he was hospitalised in 2013.

[105] The plaintiffs were also responsible for the depletion of livestock in the farm, since they slaughtered goats on each of their visits to the farm and neglected the rest of the animals to die when he was at the hospital, since none of them permanently resides at the farm.

[106] He declared that he had transformed the estate farm from a bush that it was in 1998, to a habitable home, where the plaintiffs would stay whenever they visited.

[107] According to him, the 1st and 2nd plaintiffs employed Wilson Lutwama (alias Taata Sam), Ddungu and Ivan who have never accounted for money that they collected from the stone quarrying activities on Plot 21 of the estate, despite several demands and reminders made by him.

[108] He called for a meeting, in 2016, where family members including the 1st plaintiff, Stephen Drani (6th plaintiff) and others attended and discussed the administration of the estate. It is the 6th plaintiff who is currently in charge of the estate property in West Nile. He asked this court to accept **Exhibit D24**, which is evidence of his accountability as administrator of the estate.

[109] During his cross-examination, the 1st defendant testified that he filed an inventory in the High Court in 1998. He did not distribute the estate amongst its beneficiaries because he wanted to keep the family together after the late Drani's demise. The other reason for his decision not to distribute the estate was that one of the beneficiaries of the estate (Charlotte) was still a minor although she is now aged thirty-five (35).

[110] According to the witness, he did not know that it was a requirement under the law for an administrator to distribute a deceased person's estate within one year of his appointment. He admitted the fact that he did not distribute the deceased's estate in 2004 when Charlotte became an adult. His failure to distribute the estate was largely due to the fact that the beneficiaries of the estate had conflicting interests.

[111] He declared that the estate land in Wakiso District was comprised of 470 hectares of land, but its size reduced over time. Plot 9 contained 27 acres, which had been transferred into the name of the late Drani. The beneficiaries agreed to sell 100 acres of land to the 4th defendant. He exchanged about 40 acres

of land with the 4th defendant for Plot 41, which the late Drani had mortgaged to the 4th defendant, in order to retain the stone quarry on that Plot 41, where the deceased's family still derives its income from. An agreement drafted by the 4th defendant's lawyer was subsequently executed between them and the exchange transaction made was accepted as a sale between them.

[112] He clarified that he gave the 4th defendant 60 more acres in exchange for Plot 41, as interest, which the said defendant had asked for, before surrendering the title for Plot 41 which was security for the mortgage that the late Drani took from the 3rd defendant.

[113] The 1st defendant testified that he was in Senior Six in 1999 when the said agreement was executed. Notwithstanding the fact that he had earlier on testified that he exchanged 40 acres of land with the 4th defendant for Plot 41, he subsequently contradicted himself when he admitted the fact that he actually received cash for the said 40 acres as shown by **Exhibit D18**.

[114] It was the 1st defendant's evidence that he did not have a copy of the inventory of the estate, which he had filed in the high court, because it had been stolen by the 2nd plaintiff in a robbery at the farmhouse, which happened on 22nd July 2015. The incident was reported to the police and the said inventory was listed as one of the stolen items in his police statement.

[115] He testified additionally that he was unable to obtain a copy of the said inventory he had filed from the court in which he had filed it, because on the day he tried to do so, there was a riot in town, which made the court building inaccessible. He explained that the phrase "benefits given to the beneficiaries" in paragraph 4 of his witness statement meant expenditure he has incurred as follows: payment of school fees for his siblings Victoria Drani, Claire Drani, Robert Drani, Stephen Drani and Henry Drani from primary seven (7) to 'O' level and when they

dropped out of school; providing them with medical care; catering for their welfare; meeting burial expenses of his late siblings Benadetta, Grace, John, Henry, Hellen and for their parents; fulfilling cultural requirements for burials, which included slaughtering bulls and goats for their relatives to eat during family funerals; buying a vehicle (Prado) worth forty million shillings (40,000,000/=) for the 6th plaintiff.

[116] Furthermore, it was his evidence that when the 7th plaintiff developed a medical problem, he was able to reach an agreement with the 2nd defendant in which she accepted to surrender a piece of land from what he had sold her to the 7th plaintiff, to enable the 7th plaintiff to solve her health problems. He never documented the money which he gave to the beneficiaries of the estate to cater for their welfare.

[117] He established a stone quarry from which the entire family derives benefits. The estate now earns one million (1,000,000/=) daily from it. Proceeds from the quarry are running the farm as well as the family home in Adjumani District.

[118] Regarding the loan he obtained from Damanico, he got it because he wanted to become self-employed. The said loan benefitted the estate, since he used it to start the stone quarry and employed ten (10) workers. The said loan was later written off.

[119] He asserted that it was his personal decision to recover the estate's land that had been sold to the 4th defendant. The beneficiaries agreed to sell 100 acres of land to offset the late Drani's debts. At the time the 4th defendant bought the said land, an acre of land cost 300,000/= in Wakiso.

[120] He had distributed the 30,000,000/= between the beneficiaries who signed for their shares and used their respective shares for school fees amongst other things. He also gave some money to his relatives who signed for it. When asked

by opposite counsel to adduce the alleged signed documents of proof that the beneficiaries had received money from him, the 1st defendant declared that he had been advised by his lawyer not to produce the said documents to the court.

[121] He subsequently contradicted his earlier evidence that he had acted without legal advice when he testified that it was the late Drani's legal representative a one, Counsel Mugalu who advised him to keep the late Drani's files, decide as a family to sell the 100 acres of estate land, transfer Plot 50 of Block 241 into his name and then sell it to get money to clear the late Drani's debts.

[122] It was his evidence that Plot 50 measures approximately eighty-six (86) acres. He denied selling it, contrary to the testimonies of DW3 and DW1, whose unrebutted evidence is that they bought land from the 1st defendant, which was carved out of Plot 50.

[123] The 1st defendant admitted that his decision to rent out and sell land to *kibanja* holders was a personal one. He explained that he always acted for the benefit of all beneficiaries who were absentee landlords and whom he provided money whenever they needed it, in addition to providing them with food items such as matooke, chicken and potatoes. He maintained that the reason he recovered Plot 41 of Block 241 from the 4th defendant was to enable the family of the deceased to receive sustainable income from the stone quarrying activities on the said land.

[124] The sale of *bibanja* on the suit land was not only targeted at generating income for running the estate but also aimed at protecting the estate property against encroachers and squatters at the boundaries of the estate. In his view, the beneficiaries of the estate had profited from his decisions since they are still reaping from the stone quarry.

[125] The 1st defendant denied selling land to *kibanja* holders contrary to the order of the court. According to him, his actions

on the suit property were done to enforce the court order, although he was being blamed for what he had not done. He declared that there were about 100 *kibanja* holders on the estate land. He confessed that he neither knew how many acres of suit land were occupied by *kibanja* nor how much money he had received from the said *kibanja* holders.

[126] He had spent some of the proceeds of the sale of estate land to convert the cowshed on the suit land into a family house. He also stocked the estate farm with cows, but blamed the farm employees for being unsophisticated and unable to care for Friesian cows, leading to their death. Strangely, he contradicted his own statement when he retorted during cross-examination that it was irrelevant whether the said Friesian cows had died or had been sold by him, since what mattered most according to him is the fact that the said cows no longer exist.

[127] Regarding paragraph 12 of his witness statement, it was the 1st defendant's testimony that he held several meetings with the beneficiaries of the estate, but he could not recall giving them the accountability for his administration of the estate, save for the meeting held in 1998, when he had just taken over the estate's administration. He however believed that he had done his best to administer the said estate, despite neglecting to render an account for seventeen (17) years. It was also his testimony that he called meetings but the plaintiffs refused to attend them. He didn't remember how many such meetings he had called.

[128] He acknowledged the fact that he is an alcoholic and that the reason the 1st and 2nd plaintiffs took over the administration of the estate was his admission into a rehabilitation facility for ninety (90) days in 2013. It was his further testimony that he did not hand over the documents of the estate to the new administrators because the 1st plaintiff who stays in Kampala and

the 5th plaintiff who lives in Arua had not approached him together to collect the said document.

[129] During his re-examination, the 1st defendant testified that the 1st plaintiff and the 5th plaintiff as well as the other family members attended the meeting as of 22nd May 2016 as shown in **Exhibit D23**.

[130] He informed court that he is an accountant by profession, a clearing agent by occupation and is a farmer and businessman. He clarified that he had handed over all the land titles of the estate land in Wakiso and Moyo, along with the deceased's safe to the 1st plaintiff.

[131] He prayed that the court finds that the plaintiffs are not entitled to the remedies sought for and that their claim should be dismissed with costs. He further asked that the 1st and 2nd plaintiffs be ordered to account for proceeds collected from stone quarrying activities at the estate and the sale of pieces of land in Nairobi.

THE COURT'S FINDINGS AT LOCUS IN QUO VISIT TO NSEKWA MUSISI VILLAGE, MENDE S/C WAKISO DISTRICT ON 9TH NOVEMBER 2020.

[132] The court convened in the compound of the estate farmhouse. All parties were present. Ms. Asumpta Kemigisha Ssebunya Counsel for the plaintiffs, Mr. Patrick Waiswa counsel for the 1st defendant, Mr. Javis Lou counsel for the 3rd defendant and Mr. Kwesiga Bateyo counsel for the 4th defendant were present.

[133] In attendance were Mr. William Musigire - Chairperson LC1, Ms Christine Kyotera - Secretary LC1, Mr. Leo Sempijja - Defence Secretary, and Mr. Ali Mundera the manager of Maende mixed farm.

[134] At locus in quo, PW1 testified that the farm was comprised of nine (9) plots of land. Eight (8) of them were purchased from Yeremiah Sebuliba and one from Grace Mpagi by the deceased about 1977. All together the size of estate land was 470 acres at the demise of the deceased.

[135] She showed the court the extent of Plot 39, which was the land at the entrance of the farm, which constitutes 1.6 hectares and Plot 9 which had 27 acres of land and was registered to the name of the late Drani. She stated that the farmhouse stands on what was left of Plot 50 originally comprising of 87 hectares (approximately 214 acres). What is left of the said plot is only 60 acres.

[136] The 4th defendant bought half of Plot 37 from the 1st defendant and in turn sold it to its current occupants, who have constructed a housing estate on it. The 2nd defendant was sold approximately 10 acres of Plot 50. Another 6 acres of land carved out of Plot 13 were sold to the 3rd defendant. There is no more free land.

[137] The deceased bought the estate land from Sebuliba when it was free of *kibanja* holders having compensated them before the deceased purchased the suit land, but currently the land is full of *kibanja* holders, some of whom are not purchasers of land from the 1st defendant. According to her, over 100 *kibanja* holders entered the land since 2011.

[138] She testified that the 2nd to 4th defendants were sued because they bought the land closest to the farmhouse. The plaintiffs did not want the said defendants to take over their heritage. The house on the suit land replaced a paddock, inherited by their father from Sebuliba when he bought the land. She was unaware that the 1st defendant had signed any agreements before 2011 with any *kibanja* holder.

[139] On his part, the 1st defendant additionally testified that he retrieved Plot 41 from the 4th defendant and he sold him Plot 37. He further gave him Plot 5, which was also next to Plot 37.

[140] The late Drani also had a debt amounting to two hundred and forty thousand Kenyan shillings (240,000/=) in Langatta Kenya. The 1st defendant used the 30,000,000/= that he received from selling the 100 acres which the beneficiaries instructed him to sell, to pay off that debt. He insisted that he permanently stays on the suit land premises, while the 1st plaintiff has never bothered to live there.

[141] He asserted that the reason that the 2nd defendant surrendered to him 4.5 acres of the land from the 10 acres he had initially sold to her was to free her from the tenant and landlord relationship so she could obtain a land title for the remaining half. The 7th plaintiff was subsequently given that land so that she could raise money to go for a kidney transplant.

[142] He constructed the farmhouse because he felt that the family needed a house on the farm. His uncle John Bull was the construction worker who built it. The deceased's house in Langatta was taken over by their stepmother after the estate lost a court case in Nairobi. The estate still has four acres of land in Nairobi. He testified that both Plots 41 and 42 on a hill, measuring approximately 100 acres and are still intact.

[143] He declared that a one Bogere owes him ninety million shillings (90,000,000/=) and is wrongfully claiming for 15 acres of estate land. The said Bogere has sued him at the Family Division of the High Court in respect of his claim. It was the proceeds of the land he sold land to Mr. Bogere which he used to buy a Prado for the 6th plaintiff.

[144] Contrary to his testimony that Plot 42 was intact, he testified that a lady named Georgina Nfukize had apportioned herself more land than the eight (8) acres he had sold her on Plot 4. Apart from the land sold to Mr. Bogere and Ms Nfukize, the remaining part of the hill was unoccupied.

[145] The 1st defendant maintained that he did not give away the 4.5 acres of land surrendered by the 2nd defendant to the 7th

plaintiff wrongfully, since he was still the administrator of the estate when he drafted the agreement reached with Mrs. Omara. He did everything to save the 7th plaintiff's life as she is his sister and a beneficiary of the estate. It was his statement that the injunction issued by the court mentioned above, affected only him and not the 7th plaintiff who was in dire need, causing him to support the execution of **Exhibit P2**.

[146] The 2nd defendant (DW1) took the court to her portion of the disputed land and showed court the 10 acres of land that she had bought together with her late husband from the 1st defendant, containing a permanent residential house. Her land borders the land purchased by the 3rd defendant on the eastern side and Njovu housing estate on the western and northern sides. It borders the farm house on the southern part.

[147] She testified further that when the 4th defendant sold land to the owners of Njovu housing estate, part of her land was fenced off. She took the court through the 6-acre piece of land, which the 3rd defendant bought from the 1st defendant, which land just like hers, stretches up to the valley and borders the estate farm.

[148] She showed the court the portion of land that she gave back to the 4th defendant, in which she made a commitment with the 7th defendant indicating that she had sold her the land measuring 4.35 acres. The said land is the part that borders the Drani farm. She showed court maturing eucalyptus trees in the valley that were planted by the 3rd defendant as well as the servant's quarters built by the 3rd defendant on her said piece of land she bought from the 1st defendant.

[149] The court had a panoramic view of the entire estate, when it moved through Njovu housing estate which comprises of former Plots 5, 37 and 48 of the deceased's estate, sold to the 4th defendant, which Plots are now numbered 46 and 49.

[150] Njovu estate is well established and is expansive. It is the first development one sees on their way to the farmhouse of the deceased's estate. No one with eyesight can miss it. The estate farm is located at the rear part of Njovu housing estate. The disputed plots purchased by the 2nd and 3rd defendants are also located at the tail end of Njovu estate.

[151] Plots 41 (the quarry) and 42 are both on a hill. At the valley between those plots and Njovu estate are several residential buildings on land that is not part of the deceased's estate. Plot 42 was not completely vacant as there was some farming activity on its western side. The quarry is on Plot 41 and the court could from Njovu estate see that excavation had occurred on the lower part of Plot 41, which was largely vacant uphill, but containing some homes downhill.

[152] Next to the farm house were gardens of mangoes, cocoa and yam.

[153] Most land of the deceased's estate was occupied, save for the part towards the valley, that borders the 2nd and 3rd defendant northwards and an unnamed owner of a eucalyptus plantation eastwards. The court could not however establish to extent of vacant estate land, since it did not avail itself the services of a surveyor.

DOCUMENTARY EVIDENCE

[154] The following documents were admitted as exhibits for the plaintiffs:

- 1) Exhibit P1 are letters of administration of the estate of the deceased dated 27th October 1998 issued to Anthony Marri K. Drani;
- 2) Exhibit P2 is a sale agreement made between Anthony Drani and Hellen Busi dated 7th August 2013, for land comprised in Plot 13 of Block 242, Wakiso District;

- 3) Exhibit P3 is a sale agreement made between Anthony Marri Drani and Wycliffe Mulindwa, dated 19th March 1999, for land comprised in Plots 5 and 37 of Block 241;
- 4) Exhibit P3(A) is a certificate of title for Plot 49, Block 241 Busiro County, Mengo District, showing M/S A. Dean & Co. Ltd as its registered proprietor;
- 5) Exhibit P3(b) is a certificate of title for Plot 46, Block 241 Busiro County Mengo District, showing M/S A. Dean & Co. Ltd as its registered proprietor;
- 6) Exhibit P4 is a sale agreement made between Anthony Marri Drani and M/S A. Dean & Co. Ltd, dated 3rd August 1999, for land comprised in Plot 28, Block 241;
- 7) Exhibit P5 is a sale agreement made between Anthony Marri Kinyatta Drani and Mukasa Gaster Mutesasira, dated 3rd May 2008, for land neighbouring Kinyatta Abiba, Nakayita and a road; and a sales agreement between Gaster Mutesasira Mukasa and Bogere John Muwanguzi, dated 15th June 2013, in respect of the same land;
- 8) Exhibit P6 is a sale agreement made between Anthony Marri Kinyatta Drani and Bogere John Muwanguzi, dated 2nd April 2012;
- 9) Exhibit P7 is a sale agreement made between Kinyatta Tonny Drani and Sselewu Mathias, dated 9th March 2013;
- 10) Exhibit P8 is a sale agreement made between Anthony Marri Kinyatta Drani and Bogere John Muwanguzi dated 13th July 2013, for land comprised in Plot 50, Block 242, Wakiso District;
- 11) Exhibit P9 is a sale agreement made between Anthony Marri Kinyatta Drani and Bogere John Muwanguzi, dated 8th October 2013 for land comprised in Plot 23, Block 242 Wakiso District;
- 12) Exhibit P10 is a sale agreement made between Anthony Marri Kinyatta Drani and Bogere John Muwanguzi, dated 8th

September 2013 for land neighbouring Mrs. Luwutu, Zamu and Kinyatta;

- 13) Exhibit P11 is a memorandum of understanding made between Anthony Marri Kinyatta Drani and the family of Georgina Nfukize, dated 15th September 2015 for land comprised in Plot 42, Block 241;
- 14) Exhibit P12 is a certificate of title of Plots 47 and 48, Block 241 showing Anthony Marri Drani as its registered proprietor;
- 15) Exhibit P13 is a certificate of title of Plots 50 and 47, Block 241 showing Anthony Marri Drani as its registered proprietor;
- 16) Exhibit P14 is a certificate of title of Plot 42, Block 241 showing Jeremiah Sebuliba as the registered proprietor;

[155] The following documents were admitted as exhibits for the defendants:

- 1) Exhibit D1 is a memorandum of understanding made between Victoria Drani and Maureen Omara dated 25th February 2020 in which Ms Omara's land was subdivided and given to Victoria Drani in a bid to partially settle Civil Suit No.135 of 2015;
- 2) Exhibit D2 is a land sale agreement made between Anthony Drani and Omara Thompson dated 29th March 2012;
- 3) Exhibit D3 is a sale agreement made between Anthony Drani and Omara Thompson, dated 18th March 2013, for land comprised in Block 241, Plot 13 Mpigi Wakiso District;
- 4) Exhibit D4(a) and D4(b) is a sale agreement made between Anthony Drani on one hand and Omara Thompson and Maureen Omara on the other hand, together with its translation dated 14th February 2013, for land neighboured by Mulindwa in the East, Hellen

Busi in the west, Omara in the North and Anthony Kinyatta Drani in the South.

- 5) Exhibit D5(a) and D5(b) is a sale agreement made between Anthony Drani on one hand and Mr. and Mrs. Omara Thompson on the other hand, together with its translation dated 15th August 2013, for land neighboured by Mulindwa, Hellen Busi, Omara and Anthony Drani;
- 6) Exhibit D6(a) and D6(b) is a land sale agreement made between Sendyowa Richard on one hand and Mr. and Mrs. Omara Thompson on the other hand, together with its translation dated 4th October 2012, for land located at Kazinga Lukoma Musisi, neighboured by Mulindwa, Omara and Sendyowa;
- 7) Exhibit D7 and D7 (b) is an acknowledgement of payment of 1,000,000/= to Sendyowa Richard from Mr. Omara, together with its translation dated 27th February 2013, witnessed by the LC Chairman Salongo Musigire;
- 8) Exhibit D8 is a sale agreement made between Anthony Drani and Richard Sendyowa, dated 14th December 2011, for 3 acres of land in Kazinga;
- 9) Exhibit D9 (same as Exhibit P2) is a sale agreement made between Anthony Drani and Hellen Busi, dated 7th August 2013, for land comprised in Plot 13, Block 242 Wakiso District;
- 10) Exhibit D10 is a receipt of payment of Busuulu and Kanza fees, dated 7th August 2013, from Maende Mixed Farm Uganda, addressed to Ms. Hellen Busi;
- 11) Exhibit D11(a) and D11(b) is a sale agreement made between Kinyatta Drani and Hellen Busi, together with its translation dated 10th September 2013, for land comprised in Plot 50, Block 241;

- 12) Exhibit D12(a) and D12(b) is a sale agreement made between Sserugooti Robinson and Helen Busi, together with its translation, dated 4th October 2013, for land bordering Seyotowa Richard, Omara and Kinyatta Drani;
- 13) Exhibit D13 is a receipt of payment of Busuulu and Kanzu fees, dated 16th May 2015 from Maende Mixed Farm Uganda, addressed to Ms. Helen Busi;
- 14) Exhibit D14 is a notice for a general meeting dated 24th April 2018, from the administrator of the estate of the late Charles Drani (Anthony Marri K. Drani) to all *bibanja* holders;
- 15) Exhibit D15 are minutes of the meeting held on 6th May 2018, between the administrator of the estate (Anthony Marri Kinyatta Drani) and *bibanja* holders;
- 16) Exhibit D16 is a loan agreement made between Wycliffe Mulindwa and the late Drani, dated 29th October 1997;
- 17) Exhibit D17 is a sale agreement dated 19th March 1999, made between Anthony Marri Drani and Wycliffe Mulindwa, for land comprised in Plots 5 and 37, Block 241;
- 18) Exhibit D18 is a sale agreement dated 3rd August 1999, made between Anthony Marri Drani and Ms Dean & Co. Ltd, for land comprised in Plot 48, Block 241;
- 19) Exhibit D19 (same as Exhibit P3(B) is a certificate of title for land comprised in Plot 46, Block 241 Busiro County Mengo District;
- 20) Exhibit D20 (same as Exhibit P3(A) is a certificate of title for land comprised in Plot 49, Block 241 Busiro County, Mengo District, with M/S A. Dean & Co. Ltd as its registered proprietor;

- 21) Exhibit D21 is a post-dated cheque dated 3rd November 1997 issued to the 1st defendant by Patrick Futo Drani;
- 22) Exhibit D22 is a document granting powers of attorney to Robert Drani (2nd plaintiff) by Anthony Marri K. Drani;
- 23) Exhibit D23 are minutes of a meeting held in Mende Subcounty Wakiso District, by the beneficiaries of the estate of the late Charles Origa Futo Drani, dated 22nd May 2016; and
- 24) Exhibit D24 is an accountability report dated 18th January 2015 made by the 1st defendant for the estate of the late Charles Origa Futo Drani.

REPRESENTATION

[156] Ms. Asumpta Kemigisha Ssebunya represented the plaintiffs. Mr. Patrick Waiswa represented the 1st defendant. Ms. Doreen Ninsiima represented the 2nd defendant. Mr. Javis Lou represented the 3rd defendant and Mr. Kwesiga Bateyo represented the 4th defendant. Counsel addressed the court through written submissions.

SUBMISSIONS OF COUNSEL

Arguments for the plaintiffs

[157] Ms. Asumpta Kemigisha Ssebunya chose to argue the 1st and 5th issues separately, issues 3 and 4 jointly and abandoned the 2nd issue.

[158] Regarding the 1st issue, Ms. Ssebunya's submitted that, the 1st defendant's actions of transferring the property on Plot 37, Block 241 of Busiro County in Mpigi District into his name, instead of doing so in his capacity as administrator of the deceased's estate, is undisputed.

[159] She also submitted that the 1st defendant had departed from the resolution made by all beneficiaries of the estate when he sold to Mr. Mulindwa, more than the agreed 100 acres of land, a move which clearly showed that he abused his position as administrator of the estate and mismanaged the estate.

[160] She averred that the 1st defendant also sold estate properties to the 2nd and 3rd defendants without authorization of the other beneficiaries, in addition to allowing trespassers and squatters to occupy estate land.

[161] She maintained that at the time he became administrator, the whole of Block 241 did not have any squatters on it.

[162] She stated that the 1st defendant had sold the said estate property at a meagre price.

[163] Furthermore, it was submitted for the plaintiffs that the 1st defendant refused to distribute the estate amongst the beneficiaries for his selfish reasons and his failure to do so led to the depletion of the estate. She asked the court to consider the fact that the 1st defendant had confessed that he did not know how to administer the estate, since he had just completed his senior six examinations when he was made administrator of the estate.

[164] Ms. Ssebunya pointed out the fact that the 1st defendant had failed to file an inventory within six months and had not rendered a true account of the estate property and credits within a year from the date in which he was granted letters of administration of the estate of the deceased. Counsel further submitted that not only had the 1st defendant collected revenue from the deceased's estate for his sole benefit, but that he had also failed to maintain, restock or expand the estate farm which he had utterly run down.

[165] Counsel submitted that the 1st defendant had lied to the court about paying school fees for the 2nd 3rd 6th 7th and 8th plaintiffs, since the said plaintiffs were all above 20 years of age and no

longer went to school 1999. No evidence however, was adduced by the plaintiffs to show that they were all above 20 years of age and had left school when the 1st defendant became administrator of the estate.

[166] Counsel for the plaintiffs asserted that the 1st defendant's claims that he had used the estate's money to bury his deceased siblings and that he rented out estate land in order to inhibit encroachment of estate land were lies that he had made to cover up his gross mismanagement of the estate.

[167] Counsel also asserted that the plaintiffs had led concrete evidence, discharging their burden of proving the 1st defendant's gross mismanagement of the estate.

[168] Regarding issue number 3, it was submitted for the plaintiffs that the beneficiaries decided to sell the 100 acres of land to obtain income to settle debts incurred by the previous administrator - the late Drani. She stated that the beneficiaries were targeting the repayment of 3,325,000/= owed to the 4th defendant so that they could retrieve the certificate of title for Plot 41, Block 241, which was retained by him as security for the money loaned.

[169] She wondered why the 4th defendant went ahead to mutate off 160 acres from land now comprised in Plots 46 and 49 of Block 241, despite the fact that his debt had been fully settled as per the 1st defendant's testimony. Counsel drew the court's attention to the 1st defendant's testimony, in which he confessed that he actually never sold 40 acres of estate land to the 4th defendant but had instead exchanged it for the title of Plot 41.

[170] She contended that the plaintiffs enjoyed a right to the 60 acres of land which were sold by the 1st defendant to the 4th defendant, which right was violated by the 4th defendant when he carved off 60 acres, transferred them in the name of his company and later sold the land off. She cited the case of ***Tororo Cement Co. Ltd Versus Frokina International Ltd***

Civil Appeal No 21 of 2001 to support her contention, it was her prayer that the court resolves issue 3 in the affirmative.

[171] Regarding issue 4, Ms. Ssebunya submitted that for a purchaser to successfully rely on the doctrine of being a bonafide purchaser for value without notice, one must prove that: he/she holds a certificate of title; had purchased the property in good faith; had purchased the property for valuable consideration; the vendor had an apparent title; purchased the property without notice of any fraud; and was not a party of the fraud as was decided in the case of **Hannington Njuki Vs William Nyanzi H.C.C.S No. 434/1996**.

[172] Counsel discussed the testimony of the 2nd defendant in which she had claimed that jointly with her late husband, she purchased 10 acres of land from the 1st defendant in bits as established by **Exhibits D2, D3, D4, D5 and D6** and that she was only notified by the plaintiffs that the 1st defendant had fraudulently sold the said land to her, just before the meeting that was called by the plaintiffs. She submitted that the 2nd defendant despite being warned by the plaintiffs in that meeting, proceeded to construct a structure on the suit land. Furthermore, the plaintiffs' counsel submitted that notwithstanding the court injunction above mentioned, prohibiting anyone from dealing in the suit property, the 2nd defendant subsequently entered into a consent agreement with the 7th plaintiff, where she agreed to give back 4.5 acres of land she purchased from the 1st defendant to the 7th plaintiff. In counsel's opinion the 2nd defendant's subsequent actions confirm the fact that she did not buy the disputed land in good faith.

[173] Ms Ssebunya also submitted that since the grant of letters of administration to the 1st defendant had been revoked and a new grant issued to the 1st and 5th plaintiffs as administrators of the said estate, the 2nd defendant's continued dealings with the 1st

defendant, confirm the fact that she was all along acting in bad faith.

[174] She argued that the 2nd defendant contravened Sections 34(1), (3) and (9) of the Land Act, when she purchased land from a one, Richard Sendyowa since neither the seller nor the buyer had the requisite landlord's consent at the time of the transaction. She concluded that the 2nd defendant's actions were not those of a bonafide purchaser for value without notice.

[175] Regarding the 3rd defendant's dealings with the 1st defendant, Ms. Ssebunya submitted that as soon as the 1st defendant started mismanaging the estate in 1999, the family of the deceased agreed to put up posters on all entrances of the estate and also advertised on several radios and in newspapers of wide circulation that the Drani estate was not up for sale. However, despite being privy to the above information, the 3rd defendant bought land from the 1st defendant as evidenced by **Exhibits D9, D11 (a) and D12.**

[176] She further submitted that in the transaction dated 4th October 2013, the 3rd defendant purchased an acre of land from a one, Robinson Sserugooti without the consent of the landlord, which action was also contrary to Sections 34 (1), (3) and (9) of the Land Act. To strengthen her argument, she cited the decision in the case of **Byatike Kikonyogo Civil Appeal No 3 of 2014**, where it was held that the provisions of Section 34(3) of the Land Act were offended when the consent of the registered proprietor is not sought. She prayed that the court finds that the 3rd defendant had unlawfully purchased her *kibanja* and was thus not a bonafide purchaser for value.

[177] As far as issue 5 is concerned, counsel prayed for the following orders:

- i. The cancellation of all illegal transactions between the 1st defendant and the 2nd, 3rd and 4th defendants in respect of

- the land comprised in the estate of the late Charles Origa Futo Drani;
- ii. An eviction order against all defendants from the land comprised in the estate of the late Charles Origa Futo Drani;
 - iii. An order of permanent injunction restraining the defendants from dealing in the land comprised in the estate of the late Charles Origa Futo Drani;
 - iv. An order against the 1st defendant for general damages for the fraudulent sale of part of the estate of the late Charles Origa Futo Drani;
 - v. Mesne profits of 600,000/= per month from January 1999, since the plaintiffs have been deprived of income from the deceased's estate for the period between 1999 to 2019;
 - vi. Further mesne profits amounting to 500,000,000/=, payable to the plaintiffs by the defendant, given the fact that the 1st defendant, in his evidence in cross-examination admitted that he had sold part of the land and rented out part of it and had received approximately 500,000,000/=;
 - vii. General damages as prayed for in the plaint, since the actions of the defendants were high handed and yet the plaintiffs may never receive their actual shares in the estate and have suffered anguish.
 - viii. Costs of the suit.

Arguments for the 1st Defendant

[178] Counsel for the 1st defendant chose to argue issues 1-4 jointly and issue 5 separately.

[179] Regarding 1 - 4 issues, Mr. Patrick Waiswa submitted that the 1st defendant made sure that he paid off the debts incurred by the late Drani using the income from the sale of the 100 acres of land agreed upon by all beneficiaries. He repossessed land comprised in Plot 41 of Block 241, which was security for the

loan advanced to the late Drani by exchanging it with 60 acres of the suit land. Counsel submitted that the 1st defendant's actions benefitted the plaintiffs since the estate retained the lucrative Plot 41 of Block 241, which is a good source of income for the beneficiaries, resulting from stone quarrying activities and the proceeds therefrom have helped in the construction of the farmhouse and in connecting it to solar electricity among other things. It was argued for the 1st defendant that the loan he secured from Damanico was justified as it was used in the development of the stone quarry.

[180] Mr. Waiswa further argued that since the 1st defendant was faced with the burden of an enormous estate, his decision to rent and sell land around the boundary of the estate was right, because it held encroachers and trespassers at bay. Counsel asserted that the 1st defendant had called several family meetings to account for the estate of the deceased, as is evidenced by the meeting held on 22nd May 2016.

[181] He maintained that while the 1st defendant had always wanted to distribute the estate property amongst the beneficiaries, he could not do so because the 2nd plaintiff who had been given powers of attorney to sell off estate property in Nairobi, had not declared the proceeds of the sale of the said property or given any account of that property, which was located beyond Uganda's borders.

[182] Mr. Waiswa submitted that there was un rebutted evidence adduced by the defendant that some of the proceeds of the sale of the 100 acres of land to the 4th defendant used to fund the 2nd plaintiff's trips to Nairobi. To buttress his submission, he cited the case of **URA Vs Steven Mobosi SCCA 26/95** where it was held that omission or neglect to challenge the evidence in chief on a material point by cross-examination, would lead to an inference that the said piece of evidence is accepted.

[183] According to counsel, the 1st defendant was faced with complexities that prevented him from making a final inventory and true account of the estate, since the 2nd plaintiff had refused to account for the estate property in Nairobi, as required by Section 278 of the Succession Act, coupled with the fact that 1st defendant could not administer the estate since 2013 due to his hospitalisation. Counsel insisted that there is no time set, by which an administrator must close an estate and distribute it.

[184] He maintained that due to the above-stated facts, it is erroneous for the plaintiffs to claim that the 1st defendant had mismanaged the estate or that whatever proceeds he received were applied by him for his own good.

[185] Regarding the plaintiffs' allegations of fraud, Mr. Waiswa submitted that for one to accuse another person of fraud, there should be specific proof which proof the plaintiffs had failed to adduce in the instant case, and that the 1st defendant had ably justified why he mistakenly registered his name as proprietor of Plot 50, when he testified that he did not have legal counsel at the beginning of his tenure as administrator of the estate, to advice otherwise. Counsel therefore concluded that the plaintiffs had failed to discharge the burden of proving that the 1st defendant was fraudulent in his transactions and had mismanaged the estate.

[186] In respect of issue 5, counsel submitted that the plaintiffs had already received the only remedy they were entitled to, and that is the revocation of the 1st defendant's letters of administration and the appointment of the 1st and 5th plaintiffs as administrators of the estate through the partial consent judgment that was entered into by the parties during the trial.

[187] He stated that since the plaintiffs had failed to prove the 1st defendant's mismanagement of the estate and the alleged fraudulent dealings with the estate on the balance of probabilities, they were not entitled to other remedies.

[188] Concerning the counterclaim, Mr. Waiswa submitted that given the fact that the 1st and 2nd Plaintiffs had failed to file a Written Statement of Defence in response to the counterclaim, the 1st defendant is entitled to an interlocutory judgement in respect of the claims in the counterclaim pursuant to Order 9, Rule 8 of the Civil Procedure Rules S.1 71 - 1.

[189] Finally, he prayed that the suit is dismissed with costs to the 1st defendant and that the counterclaim is allowed.

Arguments for the 2nd defendant.

[190] Ms. Doreen Ninsiima chose to argue issues 4 and 5 separately. Regarding the 4th issue on whether the 2nd defendant was a bonafide purchaser for value without notice, she submitted that the 2nd defendant had established that the 1st defendant was the registered proprietor of the suit land and that she and her husband had been told that the defendant was the sole proprietor and occupant of the land when they consulted the area local authorities. Ms. Ninsiima referred to the 2nd defendant's testimony, which was corroborated by PW1, where she stated that if one made a search of Plot 50, Block 241 in the land registry, he/she would ascertain that indeed, the 1st defendant is the registered proprietor of the said land. She asked the court not to fault the 2nd defendant and her late husband for purchasing the land in question after conducting all the required due diligence and had innocently transacted with the 1st defendant, relying on their findings at the land registry and the 1st defendant's assurance that the land belonged to him. She submitted that considering the above facts, the court should find that the 2nd defendant had not connived with the 1st defendant to fraudulently purchase that land.

[191] Counsel Ninsiima further submitted that the 2nd defendant and her late husband were notified about the 1st defendant's deceit in a meeting organised by the plaintiffs after they had purchased

the land. The plaintiffs only lodged caveats on the land in 2017, years after the 2nd defendant and her deceased husband had purchased the said land and given valuable consideration for it in 2012 and 2013 as evidenced by **Exhibits D2, D3, D4(a), D5(a), D5(b), D6(a)** and **D6(b)**.

[192] It was further submitted for the 2nd defendant that the 1st defendant was not opposed to the sale of land by Richard Sendyowa, as shown by **Exhibits D5(a), D5(b), D6(a), and D6(b)** and therefore, the plaintiffs' allegation that such a sale was illegal was immaterial.

[193] According to counsel, the 1st defendant had assured the 2nd defendant that she was free to process her own certificate of title and therefore her lack of a certificate of title for the disputed piece of land does not invalidate the transaction made between the 1st and 2nd defendants or the fact that she is a bonafide purchaser for value without notice, along with her late husband. To reinforce her argument, she cited Section 181 of the Registration of Titles Act and the decision in the case of ***Amratial Purshottam Bhimji Vs Glan Singh Bhambra and Others HCCS No.298 of 2020***, which discusses the defence of being a bonafide purchaser of land.

[194] Finally, on this issue, counsel Ninsiima submitted that the 2nd defendant had partially settled the matter with the 7th plaintiff, when they agreed to enter into a memorandum of understanding so as to survey the said land and subdivide it equally as evidenced by **Exhibit D1**. She asked this court not to consider their out of court settlement as an admission of guilt, but rather to appreciate it as a move to have the 2nd defendant excused from any liability towards the plaintiffs if any.

[195] As far as the 5th issue is concerned, Ms. Ninsiima prayed that the court dismisses the plaintiffs' case against the 2nd defendant with costs. She further prayed that the court does not consider the orders additionally prayed for by the plaintiffs in their

submissions, but should stick to those orders prayed for in the amended plaint of 24th May 2017, where no orders for eviction of all the defendants or for general damages against the 2nd 3rd and 4th defendants were prayed for.

Arguments for the 3rd defendant

[196] Mr. Jarvis Lou argued issues 3, 4, 5 and 6 separately. Regarding issue 3, counsel submitted that a cause of action can only be disclosed when the plaintiff has a right, the said right has been violated and the defendant is liable as pronounced in ***Auto Garage V Motokov [1971] EA 514***. He also submitted that although the plaintiffs claim that the 3rd defendant purchased the disputed property fraudulently, a perusal of the plaint shows that the particulars of fraud were not specifically pleaded and therefore, they have not been strictly proved to the required standard. To support his point, he cited the case of ***Kampala Bottlers Ltd Versus Damanico (U) Ltd SCCA No.22/92*** for the trite opinion that fraud must be strictly proved and the burden of proof is heavier than on a balance of probabilities generally applied in civil matters and fraud must be attributable to the transferee either directly or by necessary implication.

[197] He stated that fraud means every act of deceit and dishonesty. According to him, the plaintiffs had failed to prove fraud on the part of the 3rd defendant, because she testified that she lawfully purchased the property from the 1st defendant, whom she believed to be its registered proprietor, after carrying out all due diligence.

[198] Counsel asserted that on the other hand, the plaintiffs were guilty of dilatory conduct as well as negligence, and are thus estopped from claiming otherwise, because when they found out about the 1st defendant's illegal transfers, they did not take legal action or lawful steps such as caveating the land, to put everyone else on notice. He pointed out that at the time the

plaintiffs lodged caveats in 2017, as per PW1's testimony, the 3rd defendant had already purchased her portion of the suit land.

[199] It was Mr. Lou's submission that the testimony of PW1 which is the effect that the 3rd defendant was warned about the 1st defendant's lack of authority to sell the suit land before she purchased it, was given as an afterthought and is not corroborated, because the meetings and notices PW1 alludes to, show that the said facts took place after the 3rd defendant had purchased the land and cannot, therefore, be used to invalidate the transaction established by **Exhibit D14**. He prayed that this issue fails.

[200] Concerning the 4th issue, Mr. Lou contented that the 1st defendant was accused of transferring the certificate of title into his personal names and selling off land valued at 500,000,000/=, mismanaging the estate of the deceased and failing to account to the beneficiaries. He submitted that the 3rd defendant cannot be blamed for the 1st defendant's actions since she was not notified about his particular act of illegally transferring estate property into his names and there was no way the 3rd defendant could have known about it, since she is neither a family member nor a co-administrator of the estate. Counsel maintained that it was clear from the evidence on record that the 1st defendant executed his duties singularly and his actions were individual, hence the 3rd defendant should not be held liable for them.

[201] In respect of the 5th issue, Mr. Lou submitted that the plaintiffs were wrongfully applying **Section 34 of the Land Act** to challenge the land sale transaction between the 3rd defendant and Sserugooti. He observed that at the time she bought the said piece of land, its registered proprietor was the 1st defendant whose consent was obtained as established by **Exhibit 12 (a)** and **Exhibit 12 (b)**.

[202] Furthermore, he submitted that a bonafide purchaser is a person who honestly intends to purchase the property offered for

sale and does not intend to acquire it wrongly as was held in the case of **Hajji Abdu Nasser Katende Vs Vathalidas Haridas & Co Ltd Civil Appeal No.84 of 2003**. He also cited the case of **Hannington Njuki Vs George William Musisi (1999) KALR 779** in which it was said that for one to be found to be a bonafide purchaser for value without notice, there must be a certificate of title issued under the Registration of Titles Act in respect of the suit property, the purchaser should have purchased the suit property for valuable consideration, the suit land should have been purchased in good faith and without knowledge of fraud on the part of the vendor and the vendor from whom he/she derives title to the suit property was formerly registered proprietor of the same. He maintained that the 3rd defendant had fulfilled all the aforementioned requirements of the law, the 1st defendant being the registered proprietor of the land when she purchased the property comprised in Plot 13 of Block 242 for a valuable consideration of 20,000,000/= and paid *busuulu* of 170,000/= to the 1st defendant for the property in good faith. Also, the property comprised in Plot 50 of Block 241 was purchased for 5,000,000/= as shown in **Exhibit D11 (a)** and one acre was purchased from Robinson Sserugooti for 7,500,000/= and *busuulu* of 200,000/= was paid, which fact was acknowledged by the 1st defendant.

[203] Counsel declared that the 3rd defendant had a lawful equitable interest in the said land, as evidenced by land purchase agreements, admitted in evidence as **Exhibits P12, P13 and D9, D10, D11(a), D11(b), D12(a), D12(b) and D13**. He pointed out the fact that **Exhibits D10 and D13** are receipts dated 7th August 2013 and 16th May 2015 issued to the 3rd defendant in respect of payment of *busuulu*.

[204] Mr. Lou asserted that the 3rd defendant testified that she purchased the property after conducting the required due diligence and she was not put on notice that the land did not

belong to the 1st defendant and several other people had already bought or were buying land from the 1st defendant. Counsel stated that the 3rd defendant's evidence to that effect was corroborated by DW2 who testified that he did not see anyone object to the 3rd defendant's acquisition of the land.

[205] He cited **Section 181 of the Registration of Titles, Cap 230 (RTA)**, which is to the effect that once a proprietor of land has purchased the property in good faith, his title cannot be impeached on account of fraud by the previous proprietor. He submitted that a bona fide purchaser gets good title even though the land is purchased from a proprietor who obtained registration fraudulently and, in any case, one only needs to rely on whatever name is indicated on the land title to determine ownership, as was held in the case of ***Adrabo Stanley V Madira Jimmy HCCS No.24 of 2013***.

[206] Considering the 6th issue, Counsel Lou prayed that this court does not only find that the 3rd defendant is a bonafide purchaser for value but also finds that there is no cause of action against her. He prayed that the suit be dismissed with costs to the 3rd defendant.

[207] Counsel further prayed that the 3rd defendant is granted general damages so that she is reinstated to the position she was in before she was wronged.

[208] In the alternative, he asked the court to direct that the 3rd defendant be indemnified by the 1st defendant for the loss incurred, if the court finds that there is a cause of action against her, since she acted on the 1st defendant's representations to purchase the disputed land.

Arguments for the 4th defendant

[209] Mr. Kwesiga Bateyo chose to argue issues 3 and 6 separately. Regarding the 3rd issue, he submitted that all land bought by the 4th defendant had the 1st defendant as its registered proprietor

on the certificate of title. Furthermore, it was his submission that the 4th defendant was not privy to the circumstances surrounding the management of the deceased's estate and bought the land from the 1st defendant, under the impression that he was its sole proprietor. To support his argument, Mr. Kwesiga cited **Section 59 of the RTA**, which provides that possession of a valid land title is conclusive evidence of ownership of land under the act.

[210] According to him, the 4th defendant is a bonafide purchaser of the said land for value and without notice, and is also protected by law under **Section 64(1) of the RTA**, which provides that the estate of the registered proprietor is paramount over all the other estates or interests. He declared that all equitable claims or interests existing before the registration lose their priority, once there is a registered interest.

[211] Mr. Kwesiga asserted that under **Section 136 of the RTA**, a purchaser who conducted a search on the register and established particulars of a registered proprietor has no obligation to inquire into circumstances under which the proprietor or any previous persons got his name entered on the register.

[212] Nonetheless, he contended that the plaintiffs were guilty of laches and dilatory conduct, because they condoned the said maladministration of their father's estate for over fifteen years, until 2015 when they filed this case. In his view, the plaintiffs were not coming to the court with clean hands and should not expect equity from the court.

[213] Mr. Kwesiga submitted that **Section 2 (a) of the Limitation Act, Cap 86** provides that all actions/claims for or against land must be brought within 12 years from the date the cause of action arose, but the plaintiffs filed their action more than 18 years from the date the cause of action arose, thus their claim is clearly time-barred and ought to be dismissed with costs.

[214] As far as the 5th issue is concerned, counsel submitted that there was no single illegal transaction that involved the 4th defendant concerning the deceased's estate. He therefore prayed that the suit against the 4th defendant be dismissed and an award of general damages is given to him in consideration of the psychological, mental, physical pressure and stress he has gone through under the allegations for wrongful possession of the land he lawfully purchased from the 1st defendant.

[215] He further prayed for the costs of the suit.

The Plaintiffs Arguments in Rejoinder

[216] In reply to the 1st defendant's submissions, counsel Ssebunya observed that while the 1st defendant claims that the late Drani had incurred several debts in the administration of the said estate, he only outlines the loan taken from the 4th defendant and nothing else. According to her, the 1st defendant's relocation to the estate was a strategy he created to cheat the plaintiffs as demonstrated by the testimonies of the 2nd and 4th defendants who testified that he sold the estate to them by assuming sole ownership of the estate.

[217] Moreover, the 1st defendant has never declared how much he earns from the rent he collects from the *bibanja* holders in the estate. She observed that the third parties whom the 1st defendant had brought into the estate property created problems for the beneficiaries instead of protecting the boundaries of the estate.

[218] Ms. Ssebunya maintained that the 1st defendant has never given a proper accountability of the estate and his alleged accountability (**Exhibit D24**), which was outrightly rejected by the beneficiaries of the estate, is marred by lies and inconsistencies. PW1 had pointed out the several sale agreements made between the 1st defendant and other individuals to whom he had sold land, as proof of the extent of

his mismanagement of the estate, a fact she noted, the court had established at locus in quo.

[219] Counsel declared that the achievements that the 1st defendant was relying on to justify his expenditure of estate funds, such as the reconstruction of the house on the farm, were realised as a result of the combined efforts by members of the deceased's family and not his own efforts and that had the 4th defendant been left alone to implement the decisions of the beneficiaries, the estate would now be non-existent.

[220] In rejoinder to the allegation that the 1st plaintiff did not give accountability of the estate during her management of it, Ms. Ssebunya submitted that PW1 produced bank statements and other documents showing accountability of the monies collected from the estate during the period of her take over and yet the 1st defendant could not show evidence of any bank account as proof of savings of the proceeds of the estate by him, from the time he received the grant of letters of administration up to the period of his hospitalization.

[221] According to her, his counterclaim cannot stand, since the plaintiffs have shown that in the short period that the 1st defendant was in a rehabilitation centre, they were able to effectively manage the remaining property of the estate.

[222] Counsel reiterated the fact that the 1st defendant had failed to distribute the estate for over twenty years and there was no evidence adduced of any complexity about the assets of the estate apart from the obvious fact that he had mismanaged the estate for his sole benefit.

[223] She argued that the reason the 1st defendant renounced the letters of administration of the estate is that he foresaw that he would lose this case in the end.

[224] She declared that all beneficiaries of the said estate were surprised to discover that despite transactions that the 1st

defendant had concluded on the estate, he has nothing to show in terms of savings or investments.

[225] Ms. Ssebunya reiterated the plaintiffs' earlier prayers against the 1st defendant.

[226] In rejoinder to the submissions of the 2nd defendant, she submitted that despite the 2nd defendant's admission of attending a meeting where she was informed that the person who sold the suit land to her had no authority to sell it, she still went ahead to construct a home on the land in contention, in total disregard of the warnings given by the plaintiffs.

[227] Furthermore, she noted that the 2nd defendant has no title to the land she claims to have purchased and yet legal authorities bring out the principle that one claiming to be a bonafide purchaser for value must hold a certificate of title. According to counsel, it was evident that 2nd defendant might have known that the transactions in issue were unlawful since the 1st defendant failed to meet the prerequisites for the registration of the land he sold her.

[228] The plaintiffs' counsel also argued that the 2nd defendant's dishonest actions were further exhibited by her entering into a consent agreement with the 7th plaintiff during the existence of a temporary injunction against any kind of transacting on the disputed estate. She insisted that the 2nd defendant with full knowledge that the administration of the estate had changed, still went ahead to deal with the 1st defendant, which acts proves that the 2nd defendant was not a bonafide purchaser of that piece of estate land.

[229] In rejoinder to the 4th defendant's submissions, Ms. Ssebunya argued that the 4th defendant was aware that it was the deceased's estate and even knew the number of beneficiaries on the said land, considering the fact that he had initially transacted with the 1st defendant in respect of the 100 acres, which the

beneficiaries agreed to sell to him in order to settle the debt incurred by the late Drani.

[230] According to counsel, the 4th defendant in his testimony acknowledged that the other transactions which included the extra 60 acres were done without the knowledge of the beneficiaries. She further pointed out the fact that the 4th defendant had quickly transferred the said acres of land to his company's name (M/S A. Dean & Co. Ltd), which is evidence that the 4th defendant was not an innocent buyer and the said transfer was done to defeat the plaintiffs' interests.

[231] Ms Ssebunya reiterated the plaintiffs' prayers against the 4th defendant.

DETERMINATION

[232] I have considered the pleadings and evidence adduced by the parties in this suit, the submissions of counsel, and the law applicable. Before proceeding to determine the issues raised, I will first deal with the subject of pleadings.

[233] When the plaintiffs filed their amended plaint in court, with the purpose of including the 2nd to 4th defendants as parties in this suit, the 1st and 3rd defendants had already filed their Written Statements of Defence even before summons to file a defence had been issued to them. No summons to file a defence were ever issued in this matter.

[234] It is the law that when summons have not been duly issued, a suit can be dismissed without notice. However, the defendant can waive the right to service of summons if he/she goes ahead to file a Written Statement of Defence to the suit, before being formally served in accordance with the rules of service of summons. (See ***Red Bull Ag vs Pepsico India Holdings Pvt Ltd and Anor CS (COMM) 1092/2018***). In that case, the court held:

“The objective of the process of issuance of summons is to obtain the presence of the defendant for final opportunity to be given to him to rebut the claim against him. Thus, if he appears at the initial stage in a sense there is a waiver of the right to have summons served on him...Hence, when at the initial stage itself before summons are actually served on the defendant, the defendant appears in a court having been informed through various other sources about the pendency of the proceedings, in such circumstances, it would depend upon the facts of the case as to whether the conduct of the defendant shows deemed service of summons or waiver of the right to have the summons served on him. Needless to say, this would be a pure question of fact, dependent upon the facts and circumstances of each case. Normally, once a defendant has appeared in court without service of summons it would be deemed that summons stand served on him and that he has waived his right to receive summons.”

[235] The 1st and 3rd defendants in the case before me filed their Written Statements of Defence, in the absence of any summons issued for them to file a defence to the amended plaint. Also, the 2nd and 4th defendants instructed legal counsel to represent them in this suit and further adduced evidence to support their cases. As a result, it is my finding that the defendants by their stated actions waived their right to service of summons to file their defences. By appearing in this court to defend themselves, they confirmed that they were duly notified of the suit.

[236] I now turn to the issues at hand, which are reproduced below, for ease of reference:

- 1. Whether the 1st defendant mismanaged the estate of the late Charles Futo Origa Drani;**

2. ***Whether plaintiffs No. 2, 4, 6, 7 and 8 are beneficiaries of the said estate and entitled to prosecute the present suit;***
3. ***Whether the plaint discloses any cause of action against the 2nd, 3rd and 4th defendant;***
4. ***Whether the 2nd, 3rd and 4th defendants are liable for the act and omissions of the 1st defendant as complained of in the plaint;***
5. ***Whether the 2nd, 3rd and 4th defendants are bonafide purchasers for value without notice; and***
6. ***What are the remedies available to the parties;***

Issue 1 - Whether the 1st defendant mismanaged the estate of the late Charles Futo Origa Drani.

[237] **Section 101 (1) of the Evidence Act, Cap 6** provides:

“Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts exist”.

[238] The plaintiffs in their evidence accused the 1st defendant of many acts and omissions, which according to them are proof of his mismanagement of the estate of the deceased.

[239] Firstly, the complainant accused the 1st defendant of transferring land into his personal name instead of doing so as administrator of the estate. Her evidence was corroborated by the 1st defendant himself who admitted that he transferred estate land into his personal name, but claimed to have done so in ignorance. Also, I do observe that he is registered as the proprietor of Plots 49, 46, 50 & 47 of Block 241, as shown in certificates of title admitted in evidence as **Exhibits P3 (A), P3 (B), and P13** respectively.

[240] Notably, the 1st defendant represented himself in the land sale transactions involving the 2nd, 3rd and 4th defendants and other buyers as the lawful proprietor of estate land in question. **P2** is

the sale agreement in which the 1st defendant sold Plot 13, Block 242 to the 3rd defendant as the landlord, **P3** is the sale agreement in which he sold Plots 5 and 37 of Block 241 to the 4th defendant as its registered proprietor, **P4** is the sale agreement in which he sold Plot 48 of Block 241 to M/S A. Dean & Co. Ltd as the registered proprietor, **P5** is an agreement in which he sold a kibanja of four (4) acres of land to Mukasa Gaster Mutesasira as the owner thereof, **P6** is the agreement in which he sold a kibanja of three (3) acres of land situated below the stone quarry to Bogere John Muwanguzi as its owner, **P7** is the agreement in which he sold a kibanja of 3 acres of land to Sselewu Mathias as the owner, and **P8** is the sale agreement in which he sold part of Plot 50 of Block 242 to Bogere John Muwanguzi as its registered proprietor and landlord.

[241] Similarly, the same representation was made by him to the 2nd defendant and her husband the late Mr. Omara who also acquired land on the suit land as per **Exhibits D2 to D6** and **D8**. The 1st plaintiff's testimony is corroborated by the defendant's own admission and the above-cited exhibits which I find sufficient proof of the fact that the 1st defendant transferred estate land into his name as its registered proprietor.

[242] Secondly, the plaintiffs in their evidence accused the 1st defendant of selling property on the deceased's estate to third parties without the approval of the beneficiaries of the estate. This allegation too was undisputed by the 1st defendant who admitted the fact that he did not seek the consent of any beneficiary when he sold the estate land, save for the 100 acres of land carved out from Plots 5 and 37, in which he had authority from all beneficiaries to sell it in order to clear the debt owed to the 4th defendant of 3,325,000 /= by the late Drani, who was the 1st administrator of the deceased's estate.

[243] As already stated above, the 1st defendant sold land to the 2nd, 3rd and 4th defendants as well as to M/S A. Dean & Co. Ltd, to

Georgina Nfukize, to Mukasa Gaster Mutesasira, to Bogere John Muwanguzi and to Sselewu Mathias in his capacity as owner of that land. He did not represent himself as the administrator of the deceased's estate to those buyers.

[244] The 4th defendant in his evidence corroborated the plaintiff's testimonies in respect of the fact that apart from the 100 acres on Plots 5 and 37, which he bought from the 1st defendant, he also purchased from the said defendant, land comprised in Plot 48, Block 241, on behalf of his Company M/S A. Dean & Co. Ltd, which was measuring 40 acres, as established by the sale agreement admitted in evidence as **Exhibit P4**. It was his further testimony that the 1st defendant gave him 20 acres of land as consideration for handing back Plot 41 of Block 241, which was the land mortgaged to him by the late Drani for a sum of 3,325,000/=.

[245] Without a doubt, the 1st defendant sold estate land to third parties who include his co-defendants, without the consent of the rest of the beneficiaries of the estate, which fact he has admitted in his evidence. The totality of the evidence on record establishes the fact that none of the beneficiaries of the deceased's estate was unaware of the 1st defendant's dealings on the suit land except for their authorisation to him to sell 100 acres of it.

[246] Thirdly, the 1st defendant was accused of failing to file an inventory of his management of the deceased's estate within 6 months, as well as failing to render a true account of the said estate and credits thereof, within a year from the date he was granted letters of administration of the estate. According to **Exhibit P1**, which is the grant of letters of administration to him, the 1st defendant was made administrator of the estate on 27th October 1998. He was instructed to file an inventory within a year and to render to the court, a true account of the estate.

[247] The 1st plaintiff testified that the 1st defendant neither filed the said inventory nor tendered a true account of the estate property. She further testified that the 1st defendant collected revenue from the estate but applied it for his own benefit to the detriment of the other beneficiaries of the estate. She accused the said defendant of misappropriating a total of about 500,000,000/=, which was income accruing from the sale and renting out of plots of estate land to third parties (*bibanja*) holders.

[248] According to the plaintiffs, part of the income earned from the estate was used by the 1st defendant to fuel his alcoholic addiction. The plaintiffs further blamed the 1st defendant for failing to distribute the estate amongst the beneficiaries since 1998 when he became administrator of the estate.

[249] The 1st defendant on the other hand justified his said actions, testifying that at the time he was made administrator, he was ignorant of the law and did not have legal counsel to advise him against transferring the suit land into his name. He testified that his sale of estate land to *bibanja* holders has worked in favour of the beneficiaries, since the earned income from the sale of land to *kibanja* holders was shared amongst beneficiaries and that his exchange of plots of land with the 4th defendant allowed the beneficiaries to retain Plot 41, which is being used for stone quarrying, an activity where all of them derive their sustenance.

[250] He claimed that the squatters on estate land are on it to protect it from the encroachers who would have invaded it due to its large size.

[251] It is the gist of his testimony that the revenue that he collected from the estate was utilized for the benefit of all the beneficiaries, for instance, he bought a car for the 6th plaintiff, paid school fees for some of the beneficiaries, constructed a family home with a boys quarters and an adjoining chicken house on the estate farm, purchased livestock, paid off debts,

which were incurred by the late Drani and facilitated the 2nd plaintiff's trips to Nairobi to administer the estate land there on his behalf. It is noteworthy that the 1st defendant has not adduced documentary proof of his stated expenditures as administrator of the estate.

[252] He justified the loan he obtained using estate property as security, as necessary for the development of the stone quarry and claimed without showing proof that he had called several meetings for the beneficiaries of the estate, so that he could account for his administration of the estate, but the beneficiaries did not turn up.

[253] He also attributed his failure to distribute the estate to the 2nd plaintiff's failure to produce an account for the estate properties in Nairobi and also due to the fact that some beneficiaries were still minors when he took over the administration of the estate.

[254] Lastly, he pointed out the fact that he had not been in charge of the estate since his hospitalisation in 2013 and therefore, the 1st and 2nd plaintiffs are the right persons to account for their administration of the estate starting from 2013.

[255] Without any doubt in my mind, it is my finding that the substance of the evidence adduced by the plaintiffs against the 1st defendant remains undisputed. For that reason, I will simply examine the explanations adduced by the 1st defendant, justifying his actions regarding the estate of the deceased to establish if they hold any water.

[256] It is a trite that ignorance of the law is no excuse. Thus the 1st defendant cannot claim that his ignorance of the law concerning the administration of estates is a defence for his registration of estate property in his name as proprietor thereof.

[257] In any case, from the facts available on the record, the first defendant cannot be said to have acted innocently in registering Plots 46, 47, 48, 49, 37, 50 as his own land. It is obvious to me that he told lies in his evidence when he initially claimed to have

acted without legal advice, since he subsequently contradicted himself when he admitted that a lawyer called Counsel Mugalu, the late Drani's legal representative did advise him to keep the late Drani's files, hold a meeting with the family members to obtain their consent for selling 100 acres of land to clear the late Drani's debts. Clearly, the 1st defendant obtained legal advice from Mr. Mugalu before registering the said plots complained about by the plaintiff into his own name and subsequently selling land comprised in Plot 37, Block 241 to the 4th defendant to obtain money to clear the late Drani's debts.

[258] Also, his subsequent actions of selling off several plots of estate property to the rest of the defendants, while representing himself as the owner of those plots of land, just because he appeared on the certificates of title as the registered proprietor of the said land, without the consent of the rest of the beneficiaries exposes his intention of registering the suit land as his personal property in the first place, which was to defraud his co-beneficiaries. Therefore, his claim of ignorance of the law as a defence for his actions is a mere scheme employed by him to avoid responsibility for his illegal actions.

[259] The 1st defendant also testified that the reason he could not initially administer the estate property properly was because he was too young, having been in Senior 6 when he acquired letters of administration in 1998. He stated that he was aged 57 years at the time he made his witness statement on 11th July 2019. This means that he was twenty-three (23) years old when he obtained the said letters of administration in 1998. At 23, I think that he was capable of making sound decisions, including especially, a decision to consult his co-beneficiaries when faced with any difficulty and before making any important decisions. His actions of clandestinely selling Plots 46, 49, 37, 50 of Block 241 to the respective buyers, after registering them as his personal properties, well knowing that they were not his own and

without the knowledge of the rest of the beneficiaries, (whom he had earlier consulted about the 100 acres of land he sold to the 4th defendant), cannot be said to be actions of a naïve young person. They are rather skilfully thought out actions of a cheat and not those of a confused immature senior 6 student. The defendant cannot thus escape liability by simply alleging that he was still immature at the time and did not know the right thing to do. I find that he knew perfectly well what he was up to and should be held accountable for his actions.

[260] On the subject of allowing squatters to stay on the land, purportedly to protect it from encroachers, I do note that the matter was discussed in a meeting held amongst the beneficiaries on 22nd May 2016 as shown by **Exhibit D24**. It was said that when the squatters were approached by the beneficiaries and told to leave the suit land, they insisted that they wanted compensation before they could consider leaving. From that report, the 1st defendant's action of allowing squatters on the suit land as a means of protecting it, instead created encroachers on the said land, who are now boldly demanding for compensation from the beneficiaries of the estate of the deceased before they can vacate it.

[261] Notably, it was the 1st defendant's testimony was that he does not know how much land is unoccupied on the suit land. As a result, I find his defence that by bringing squatters to the estate land he was securing it from encroachment inexplicable. It defies any logic. I do not accept it.

[262] Concerning his failure to file an inventory, the 1st defendant's testimony is that he once filed an inventory at the beginning of his administration of the estate. He was unable to obtain a copy from the court, because there was a riot in town at the time he was supposed to obtain it. He declared that he had another copy of the said inventory at home and promised to bring it to court at the next hearing of the matter. At the subsequent hearing, he

did not attend court. His counsel informed the court that the 1st defendant was ill, although he did not present to the court evidence of his client's illness. Interestingly, when he finally appeared in court on 9th November 2020, he contradicted his earlier testimony that a copy of the inventory was at home by his subsequent testimony that the said inventory was stolen from his home by the 2nd plaintiff. He had reported the said theft to police. He did not adduce evidence of the police report to corroborate his testimony.

[263] An inventory is a public document that can be formally requested for by his counsel on his behalf, from the court that issued it. This did not happen. Therefore, I am constrained to find that the 1st defendant is not being truthful about his filing of the alleged inventory and I find that he failed to file any inventory and to render a true account of the properties of the deceased as per the directive on the grant of letters of administration to him. Needless to say, he committed the offence of disobedience of a statutory duty punishable under Section 116 of the Penal Code Act and Section 278 (4) of the Succession Act, Cap 162.

[264] The plaintiffs' allegations against the 1st defendant in regard to his accountability of the estate have not been rebutted by concrete evidence. His testimony is that he had used the proceeds of the sale of estate land and the loan he had obtained from Damanico to: establish the stone quarry; pay school fees for the minor beneficiaries of the estate; pay debts incurred by the late Drani on the estate property in Nairobi; transform a bush into a habitable farm home; provide beneficiaries with food; sponsor the 2nd plaintiff's trips to Nairobi; and to buy a vehicle (Prado) for the 6th plaintiff. I find that his said claims having not been rebutted, are proved to the required standard. That notwithstanding, the onus was still on him to provide this court with tangible proof of his said expenditures of estate property, to enable the court to determine how much money was in fact

spent by him and whether his said expenditures were necessary for the benefit of the estate or whether he had indeed assumed ownership of the property and failed to the money he had derived from the estate.

[265] It is plain to me that the 1st defendant failed to declare the monies acquired by him from the sale of estate land to the so called *bibanja* holders. From the evidence on record, including his own evidence, he was unaware of the number of *bibanja* holders he brought to the suit land to allegedly protect its boundaries from encroachers. Of the alleged 100 *bibanja* holders, only 16 are established by the evidence adduced by both parties as having transacted with the 1st defendant. A total of one hundred ninety million, three hundred thousand shillings (190,300,000/=) shillings was received by him from the said *bibanja* holders from the land sale transactions. He received:

- a) 20,000,000/= from the 3rd defendant as payment for part of Plot 13 of Block 242 in Nsekwa Musisi Village, Wakiso District;
- b) 30,000,000/= from the 4th defendant as payment for Plots 5 and 37 of Block 241, Busiro;
- c) 12,000,000/= from M/S A. Dean & Co. Ltd as consideration for 40 acres of land on Plot 48 of Block 241;
- d) 12,000,000/= from Gaster Mukasa Mutesasira as payment for 4 acres of land situated in Nsekwa L.C1;
- e) 15,000,000/= from Bogere John Muwanguzi as payment for 3 acres of land located at Kizibawo Nsekwa Musisi L.C.1;
- f) 7,500,000/= from Sselewu Mathias as payment for 3 acres of land;
- g) 15,000,000/= from Bogere John Muwanguzi as payment part of Plot 50 of Block 242;
- h) 16,000,000/= from Bogere John Muwanguzi as payment for land part of Plot 23 of Block 242, Nsekwa Musisi LC1 Zone, Wakiso District;

- i) 17,500,000/= from Bogere John Muwanguzi as payment for 3 ½ acres of land;
- j) 12,000,000/= from Omara Thompson as payment of land in Kazinga;
- k) 3,300,000/= from Mr. & Mrs Omara Thompson for part of Plot 13 of Block 241, Wakiso District;
- l) 12,000,000/= from Mr. & Mrs. Omara Thompson as payment of 3 acres of land;
- m) 4,000,000/= from Mr. & Mrs. Omara Thompson as payment for 1 acre of land;
- n) 9,000,000/= from Richard Sendyowa as payment for 3 acres of land located at Kazinga and
- o) 5,000,000/= from the 3rd defendant as payment for another part of Plot 50 of Block 241.

[266] The above sale transactions are established by **Exhibits P2, P3, P4, P5, P6, P7, P8, P9, P10, D2, D3, D4(b), D5(b), D8 and D11(b)** respectively.

[267] **Exhibit P11** also shows that there was a land sale agreement entered between the 1st defendant and a one Georgina Nfukize for Plot 42, Block 241 although the purchase price is not stated on the said document.

[268] The transactions in respect of the rest of the 84 remaining *bibanja* holders are not proved by the 1st defendant.

[269] Also, while the 1st defendant says that 600,000/= was the amount he received daily from the stone quarry, which he opened in 2010, by simple calculation, the total amount received by him from the stone quarry from 2010 to 2013, when he took a break from the administration of the estate, should amount to 657,000,000/=. However, his accountability report as of 22nd May 2016, admitted in evidence as **Exhibit D24**, shows that the gross income of the estate for that period was only three hundred fifty-five million, two hundred ninety-two thousand, and two hundred shillings (355, 292, 200/=), which amount he

received inter-alia from *bibanja* holders, leaseholders and *mpozza*.

[270] The estate's total expenses according to him were one hundred forty-four million, one hundred sixteen thousand and one hundred shillings. (144,116,100/=). So, from his own accountability report, the net income of the estate should be two hundred eleven million, one hundred seventy-six thousand and one hundred shillings (211,176,100/=).

[271] If the proceeds of the stone quarry are approximately 657,000,000/=, a total that I have reached, relying on his own evidence and yet the gross income of the whole estate according to his accountability report (**Exhibit D24**), from the time he took over the mantle as administrator of the estate, up to 2013, amounts to only 355,292,200/=, the 1st defendant has told blatant lies to this court in his attempt to justify his mismanagement of the estate. His said contested accountability report, covering the period from 1998 to 2013 is unbelievable, since it is not supported by any documentary proof of his expenditures. His uncertainty about the number of the *bibanja* holders on the estate, coupled with his purported ignorance about the amount of money he had received over the years from the said holders, in my opinion confirms the plaintiffs' claims of his gross mismanagement of the estate of the deceased.

[272] After carefully considering all facts adduced by the parties to this suit, it is plain to me that the 1st defendant earned much more money from his dealings on estate property than he had used to providing necessities for the school going beneficiaries of the estate, or to pay the debts incurred by the first administrator of the estate, build the farm home, provide beneficiaries with food, paying the 2nd plaintiff's trips to Nairobi and buy a Prado for the 6th plaintiff. In any event, he has neither estimated the cost of nor produced documentary evidence to support these expenditures, which though undisputed by the

plaintiffs required quantifying to enable the court determine the veracity of his accountability for the estate's proceeds. I thus agree with Ms. Ssebunya in the circumstances of this case that the 1st defendant did misappropriate the funds of the estate.

[273] The 1st defendant's evidence that he gave some beneficiaries money, including the grannies of the beneficiaries of the estate was also rightly challenged by the plaintiffs as he refused to produce any documentary evidence or other proof of those disbursements. The 1st defendant claimed in his cross-examination to have relied on his counsel's advice not to produce the said documents. In my considered opinion he was misadvised in that regard, since the burden to prove the fact of the alleged expenditures rested on his shoulders.

[274] It is worth noting that it was also the 1st defendant's testimony that Plots 41 and 42 of the estate were intact. However, at the locus in quo, he testified that he sold eight (8) acres of land to a one, Georgina Nfukize, although she had also encroached on more land on Plot 42.

[275] It was the 1st defendant's testimony that except for the meeting of 22nd May 2016 (established by **Exhibit D23**), which the beneficiaries attended, he had called the beneficiaries of the estate for several other meetings in vain. There is **Exhibit D15** which shows that beneficiaries of the estate were called for a meeting on 2nd May 2018 but did not show up. The evidence adduced by the 1st defendant only establishes that he actually called the beneficiaries to attend two meetings only.

[276] In the meeting of 22nd May 2016, the beneficiaries expressed concerns about the status of the property at the time and were particularly worried about the number of *bibanja* holders and the squatters on the suit land. They also expressed the fact that they were ignorant about the status of estate property in Nairobi, which was being administered by the 2nd plaintiff. They similarly

wanted to know the status of the estate properties in the West Nile.

[277] Concerning the well-established fact of the 1st defendant's failure to distribute the estate, he attributed it mainly to the 2nd plaintiff's failure to produce an account for the estate property in Nairobi and also because some beneficiaries were minors. **Exhibit D22** is evidence that the 2nd plaintiff was granted a power of attorney by the 1st defendant to administer the estate property of the deceased in Nairobi, Kenya. It is the law that when a power of attorney is executed between parties, a principal - agent relationship results. A donee of a power of attorney therefore acts as the agent of the donor (See **Fredrick. J. K Zaabwe & Orient Bank & Ors SCCA 4 of 2006**). **Section 147 of the Contracts Act, 2010** provides that an agent shall render proper accounts to a principal on demand, while **Section 145 of the Contracts Act** provides:

- 1) *"An agent shall conduct the business of the principal according to the directions given by the principal or, in the absence of any directions, according to the usage and customs which prevail, in doing business of the same kind at the place where the agent conducts the business.*
- 2) *Where the agent acts contrary to subsection (1) and any loss is suffered, the agent shall make good the loss to the principal and where any profit accrues, the agent shall account for it".*

[278] It is an undisputed fact that the 2nd plaintiff has not rendered proper accounts to the 1st defendant even after he was asked to produce the status of the accounts by the beneficiaries of the estate at the above-mentioned meeting on 22nd May 2016. In light of the position of the law above quoted, the 1st defendant as the principle had the option of making the 2nd plaintiff account for the estate property in Nairobi through various avenues, including courts of law.

[279] In any case, the defendant granted powers of attorney to the 2nd plaintiff on 22nd March 2011. The 2nd defendant's failure to account to him does not justify his failure to distribute the estate before March 2011 or even after it. He should have distributed the estate properties in Uganda fairly, taking into account the value of the estate in Nairobi, instead of recklessly selling off chunks of estate land as if it was his own property.

[280] Concerning his excuse that he could not distribute the estate because some beneficiaries were minors, **Section 311 of the Succession Act** provides that minors are entitled to get their share of property in the distribution of the estate of an intestate. It is definitely a lame excuse he had made, which I will not uphold. What's more, the 1st defendant failed to distribute the estate when the last minor among the beneficiaries called Charlotte became of age.

[281] Pertaining to his defence that the 1st and 2nd plaintiffs administered the estate after his hospitalisation in 2013 without his consent and are therefore accountable for that period, the 1st plaintiff' in her testimony admitted that she took over the management of the estate after the 1st defendant's hospitalisation in 2013, because the beneficiaries of the estate collectively felt that he could no longer administer it because of his alcohol problem.

[282] **Section 268 of the Succession Act** provides that when one deals with goods of the deceased in the ordinary course of business or deals with them to preserve them, he/she is not an executor of his/her own wrong. The 1st and 2nd plaintiff's participation in the estate at the time they took over its management when the 1st defendant was battling an alcoholic addiction, (a fact he admits), was justified. The activities of the estate had to be overseen by someone who could be held culpable and the rest of the beneficiaries chose the 1st and 2nd

plaintiff to take charge of the estate in the absence of the 1st defendant.

[283] The 1st plaintiff in her cross-examination gave verbal evidence of her monthly expenditure of 5,000,000/= being estate funds received by her from the quarry, based on a bank statement, which was not tendered in evidence. Her said evidence was not discredited. At the locus in quo, she testified that she relieved Wilson Lutwama, the manager of the stone quarry, of his duties when she discovered that he was engaging in fraudulent activities. After her report of a case against him to the police, Lutwama was given some grace period to compensate the estate for the loss he had occasioned, of 25,000,000/=. That evidence was not challenged.

[284] It was also her uncontested evidence that she established both the matooke and the cocoa plantations while she was managing the estate, using proceeds from the stone quarry.

[285] In conclusion, notwithstanding the undisputed testimony of the 1st defendant that he had utilized some of the estate proceeds received by him to provide some of the beneficiaries with tuition fees, to pay debts incurred by the first administrator of the estate, to building the farm house, to providing beneficiaries with food, to sponsor the 2nd plaintiff's four air trips to Nairobi and to buy a Prado for the 6th plaintiff, it is my considered opinion, from the entirety of the evidence adduced that the 1st defendant grossly mismanaged of the estate of the deceased.

[286] Particularly, the following facts in my esteemed view constitute his gross mismanagement of the deceased's estate: recklessly selling off big chunks of estate land as if it was his personal property, and without the approval of the rest of the beneficiaries of the estate; swindling most of the proceeds therefrom and keeping no financial records in regard to his said sale of estate land; inviting more than a hundred squatters to

occupy the suit land from whom he earned *busuulu* for his own personal gain and without keeping any records of their numbers and of the *busuulu* payments; failing to keep financial records of the proceeds from stone quarrying and misappropriating the proceeds of the quarry on Plot 41; failing to obtain accountability for the estate of the deceased in Kenya from the 2nd plaintiff; creating this law suit and the suit brought against the estate by a one Bogere John Muwanguzi, from whom he obtained a loan of 90,000,000/=; failing to file an inventory as required by the law; failing without any lawful excuse, to distribute the deceased estate for decades; and expending the estate's income on unwarranted expenditures as he pleased.

[287] Consequently, on the 1st issue that was raised for determination, I agree with counsel Ssebunya and answer it in the affirmative.

Issue 2 - Whether the 2nd, 4th, 6th 7th and 8th plaintiffs are beneficiaries entitled to prosecute the present suit

[288] Counsel Ssebunya withdrew this issue and therefore there is no need for me to discuss it.

Issue 3 - Whether the plaint discloses any cause of action against the 2nd, 3rd and 4th defendant

[289] A cause of action was defined as every fact which is material to be proved, to enable a plaintiff to succeed, or every fact, which if denied, the plaintiff must prove to obtain judgment. See ***Cooke versus Gull LRD 8E. P116.***

[290] It is trite that for one party to establish that there is a cause of action against the adverse party, he/she must prove the plaintiff enjoyed a right, the right was violated and that the defendant is liable for that violation.

[291] It has already been established that the plaintiffs have a right to the suit land by virtue of the fact that they are beneficiaries of the estate of the deceased and that the said right was violated

when the 1st defendant sold off chunks of estate land and applied the proceeds thereof as he willed.

[292] The contention in this suit is whether the 2nd, 3rd and 4th defendants are liable for the violation of the plaintiffs' right to the suit land. It was settled law that in determining whether the plaint discloses a cause of action, the court must look only at the plaint and its annexures if any, and nowhere else. See ***Lucy Nelima & 2 Ors versus Bank of Baroda Uganda Ltd (Civil Suit No. 55 of 2015)***.

[293] The plaintiffs in paragraph 4(v) of their amended plaint state:
"The plaintiffs shall at the trial show that despite numerous warnings to the 2nd - 4th defendants not to purchase the suit land, they connived with the 1st defendant to enrich themselves at the expense of the plaintiffs"

[294] Since the plaintiffs in their pleadings above captioned allege that the said defendants fraudulently acquired their land, that fact is a material one to be proved, if they are to succeed in that claim, which fact is denied by the defendants. I think that the plaint in that regard establishes a cause of action. The question whether the allegation of fraud is established by the evidence adduced can only be resolved after the determination of issue No. 5 raised in this suit. I thus find that the plaintiffs have established that there is a cause of action against the defendants and answer issue No. 3 in the affirmative.

Issue 4 - Whether the 2nd, 3rd and 4th defendants are liable for the act and omissions of the 1st defendant as complained of in the plaint

[295] Whereas the 1st defendant has *inter alia* been accused of misappropriation of estate funds, selling estate land to various *bibanja* holders, and failing to file an inventory, there is no evidence that has been presented to show that the 2nd, 3rd and

4th defendants were part of the administration of the estate of the deceased. There is no way the said defendants can be blamed for the 1st defendant's actions in the administration of the estate, just because they each purchased plots of land from him. This issue therefore fails in the circumstances of this case.

Issue 5 - Whether the 2nd, 3rd and 4th defendants are bonafide purchasers for value without notice.

[296] Ms. Ssebunya's main contention was that the 2nd, 3rd and 4th defendants were fraudulent in their dealings with the 1st defendant because they were informed by the plaintiffs that the 1st defendant did not have the power to sell the land to them before they purchased their respective portions of the suit land. On the other hand, Mr. Lou submitted, and rightly so, that the plaintiffs did not specifically plead any particulars of fraud against the 3rd defendant as is required by law. The burden of pleading and proof of fraud lies on the person alleging it and the standard of proof is beyond the mere balance of probabilities required in ordinary civil cases, although it is not beyond reasonable doubt as in criminal cases. (See ***Sebuliba v Cooperative Bank Limited [1987] HCB 130***). Fraud must be proved on the part of the registered proprietor (See ***Kampala Bottlers versus Damanico Ltd SCCA No.22 of 1992***).

[297] While I agree with Mr. Lou that the particulars of fraud were not pleaded against the 2nd, 3rd and 4th defendants, and that a discussion on this issue is therefore moot, I have no doubt in my mind from my appreciation of the evidence on record, that there is no concrete evidence adduced to establish the fact of fraud on the part of any of those defendants in their transactions with the 1st defendant.

[298] The 2nd defendant's testimony was to the effect that the Local Council leaders of Nsekwa Musisi village were contacted when she and her late husband were buying land from the 1st

defendant and the said leaders witnessed the land sale agreements. When they conducted a search regarding Plot 50 at the land's registry, they established that the 1st defendant was the registered proprietor of that plot. It was also her evidence that all the land that she and her husband had purchased from the 1st defendant between 14th December 2011 to 15th August 2013 as established by **Exhibits D2, D3, D4 (b), D5 (b), D6 (b), and D8** was acquired before the plaintiffs issued any notice to purchasers of the suit land, warning them against buying land from the 1st defendant. This evidence was corroborated by the 1st plaintiff in her evidence during cross-examination, when she stated that the plaintiffs found out about the sales in issue in 2014 and also when she admitted that while inspecting the disputed land with the 2nd defendant, she was shown a structure that had been constructed by the 2nd defendant on the said piece of land.

[299] This admission contradicts her earlier testimony that the 2nd defendant was warned against buying land on the suit land but went ahead to purchase it. From her testimony, the caveats lodged on the estate property were lodged in 2017, way past the dates on which the 2nd defendant purchased land from the 1st defendant. It is obvious that the 2nd defendant did not have any prior notice issued to her by the beneficiaries of the estate before she transacted with the 1st defendant on the suit land.

[300] Notably, the 2nd defendant admitted that she entered into a consent agreement with the 7th plaintiff as per **Exhibit D1**, despite the temporary injunction that had already been issued, in a bid to come to a settlement on the dispute, because she was assured that the rest of the plaintiffs had consented to the said transaction. I cannot accept her explanation. The said transaction between her and the 7th plaintiff is an illegal one, concluded in breach of a court order. However, her disregarding of the court order *per se* in the circumstances of this case is no

proof that she had initially fraudulently acquired estate land from the 1st defendant.

[301] Therefore, the said agreement notwithstanding, I find that the plaintiffs have not proven to the required standard that the 2nd defendant was fraudulent in any way when she acquired the disputed piece of land from the 1st defendant.

[302] Regarding the 3rd defendant, she too testified that she acquired her piece of land in 2013 after carrying out due diligence as evidenced in agreements admitted as **Exhibit P2** (same as **Exhibit D9**) and **Exhibit D11 (b)**, which agreements were witnessed by the area defence secretary called Leo, the treasurer, Kyotera Christine and the chairperson called Salongo Musigire William.

[303] The obvious reason it has become customary for village local council members to witness land sale agreements is to prevent fraudulent transactions, since LCs are expected as elected leaders of the people who hold quasi-judicial powers, to know all the residents of their villages and the property they own. It is also expected that their endorsements and stamps on land sale agreements should prove to any buyer that the transaction entered into by him/her is lawful.

[304] In her cross-examination, it was established from the 3rd defendant that the portion of land she bought from the 1st defendant on Plot 13 was registered in the name of Yeremiah Sebuliba, contradicting her evidence in chief in which she stated that the deed had the 1st defendant's name. It is settled law that grave inconsistencies and contradictions unless satisfactorily explained will usually but not necessarily result in the evidence of the witness being rejected. Minor ones unless they point to deliberate untruthfulness will be ignored (**See Alfred Tajar versus Uganda EACA Cr. Appeal No. 167 of 1969**).

[305] While the 3rd defendant's contradiction about who the registered owner of the land she had purchased after due

diligence is, is not a minor contradiction, it is not in dispute that one of the plots on which the 3rd defendant purchased a piece of from the 1st defendant - Plot 50, has the 1st defendant registered as its proprietor. In other words, the 3rd defendant claims in her evidence in chief that the land was registered in the 1st defendant's name is partly correct though not entirely accurate, since she bought three pieces of land from the 1st defendant and one of them was not registered in his name. It is also an undisputed fact that Jeremiah Sebuliba was one of the two the original owners of the suit land and that the deceased died before registering the suit land in his own name. Those facts and the fact that the area local council members witnessed the sale agreements made between the 3rd defendant and the 1st defendant, confirming that he owned that land, leave no doubt in my mind that the 3rd defendant relied on their word to purchase all pieces of the land from the 1st defendant as its owner, including the piece of land from the title that is still in the name of Jeremiah Sebuliba. I find the 3rd defendant's contradiction is explained by the evidence on record in those circumstances.

[306] In any case, considering the fact that she testified seven (7) years after purchasing land on the estate from the defendant, and purchased three plots from him, her contradiction is also explainable on account of memory lapse and the said contradiction is not proof of fraud on her part, which fraud the plaintiffs have not established to as required by law.

[307] As for Ms. Ssebunya's contention that the 2nd and 3rd defendants' purchases of land from Richard Sendyowa and Robinson Sserugooti respectively were void, since they did not obtain the consent of the landlord to transact, as is required by **the Land Act, Exhibit D12(a)** is the sale agreement made between the 3rd defendant and Robinson Sserugooti and it was witnessed by the 1st defendant, while **Exhibit D6(a)**, the sale agreement between the 2nd defendant and her husband on one

hand and Richard Sendyowa on the other hand was not witnessed by the 1st defendant. Both agreements were however, witnessed by the same area LCs. In court, the 2nd and 3rd defendants testified that they had obtained consent from the 1st defendant, the *defacto* landlord, before they purchased the said pieces of land. Their evidence remains unchallenged, implying that the plaintiffs agreed with their assertions.

[308] About the 4th defendant, it is evident that he bought estate land from the 1st defendant who is its registered proprietor as evidenced by **Exhibits D17** and **D18**. An additional 60 acres (Plots 46 & 49) were given to him by the 1st defendant as consideration for the exchange of Plot 41, of Block 241, since he was not refunded the amount of money that he had loaned the late Drani.

[309] A bonafide purchaser is defined as one who buys something for value without notice of another's claim to the property and without actual or constructive notice of any defects in infirmities, claims or equities against the seller's title; one who has in good faith paid valuable consideration for the property, without notice of prior adverse claims. See ***Black's Law Dictionary, the 9th Edition***

[310] In light of the foregoing and since the plaintiffs have failed to prove that the 2nd 3rd and 4th defendants are guilty of fraud, I find that they are bonafide purchasers for value.

[311] In any event, I agree with Counsel Kwesiga's submissions that the suit against the 4th defendant is barred by limitation, since **Section 20 of the Limitation Act, Cap 80**, provides:

"Subject to section 19(1), no action in respect of any claim to the personal estate of a deceased person or any share or interest in such estate, whether under a will or on intestacy, shall be brought after the expiration of twelve years from the date when the right to receive the share or interest accrued, and no action to recover arrears of

interest in respect of any legacy or damages in respect of those arrears shall be brought after the expiration of six years from the date on which the interest became due.”

[312] Since the 4th defendant bought land from the 1st defendant in 1999 and it was the evidence of the 1st plaintiff that she visited the estate farmhouse frequently, she should have noticed the developments made by the 2nd 3rd and 4th defendants on the suit property and taken relevant steps in time to challenge the defendants’ actions. It was also the 1st defendant’s uncontroverted testimony that the beneficiaries of the estate visited the farmhouse many times and even held feasts.

[313] During the court’s visit to locus in quo, I verified the fact that the 4th defendant sold the land that he acquired from the defendant to the Njovu housing estate, which is next to the estate’s farm. The said estate is expansive. It is the first development one sees on their way to the farmhouse of the deceased’s estate. It exists on Plots 5, 37 and 48, which upon transfer to the 4th defendant became Plots 46 and 49. There is no doubt in my mind that the beneficiaries of the estate were aware of the developments that Njovu housing estate has made on the suit land over an extended period of time. The plaintiffs had a lot of time in their hands to object to the developments on the land exceeding the 100 acres that they had authorised the 1st defendant to sell, within the twelve-year window period but did not do so. Particularly, the 1st plaintiff admitted in her testimony that the plaintiffs did not say anything against the 1st defendant for nearly 20 years of his tenure as administrator, because they trusted him. I agree with counsel for the 3rd and 4th defendants that the plaintiffs are therefore estopped by their own acquiescing conduct from claiming fraud against the 2nd 3rd and 4th defendants. In the result, this issue is answered in the affirmative.

Issue No. 6 - What are the remedies available to the parties

[314] The plaintiffs made several prayers. I will discuss the first prayers jointly, and the rest of the prayers separately.

A declaration that the 1st defendant is incapable of administering the estate of the late Charles Origa Futo Drani and

The revocation of letters of administration dated 27th October 1998 issued to the 1st defendant by the High Court of Uganda.

[315] In the consent judgment entered by the parties on 11th July 2019, the letters of administration of the estate of the late Charles Origa Futo Drani (deceased) issued to the 1st defendant vide AC No.738 of 1998, were revoked and subsequently granted to the 1st and 5th plaintiffs.

[316] That consent judgement, coupled with my finding that the 1st defendant has mismanaged the estate of the deceased confirm that he is indeed incapable of administering the estate. That prayer thus succeeds.

[317] The second prayer in light of the consent has been overtaken by events.

An award of general damages for the fraudulent sale of part of the estate of the late Charles Origa Futo Drani, which denied the beneficiaries of their rights thereof

[318] It is trite that general damages are the direct, natural or probable consequences that result from the adverse party's actions. They are awarded at the court's discretion in light of the evidence adduced, concerning suffering and pain which cannot be computed in monetary terms and cannot be pleaded specifically. The court must in all cases award damages with the object of compensating the plaintiff for his or her loss. They should not be used to unjustly enrich the plaintiff and neither should the defendant be unjustly punished. The aim should be to restore the plaintiff to its situation just before the wrongful act was committed.

[319] From the evidence adduced, it is clear that loss has been suffered by the plaintiffs due to the 1st defendant's actions of misappropriation of funds, selling of estate land to the *bibanja* holders without the beneficiaries' consent, improper record-keeping, failure to file an inventory and to render a true account of the estate, failure to account for income realised from the stone quarry activities and from *bibanja* holders, as well as incurring of unexplained loans on behalf of the estate.

[320] I have also taken into account the fact that the 1st defendant made some investments on the deceased's estate during his long tenure of maladministration of the estate, such as the construction of the farmhouse and the stone quarry, as well as the expenditures that he made in respect the tuition of some beneficiaries the purchase of the 6th plaintiff's Prado, transportation of the 2nd plaintiff to and from Nairobi, payment of the late Drani's debts in Kenya and Uganda. In the premises, it is my considered view that an award of general damages amounting to 300,000,000/= would largely restore the plaintiffs to their initial position before the 1st defendant's wrongful acts. This prayer is granted.

The cancellation of all illegal transactions between the 1st defendant and the 2nd, 3rd and 4th defendants pertaining to the estate of the late Charles Origa Futo Drani

[321] Since I have not found that the transactions executed between the 1st defendant and the 2nd, 3rd and 4th defendants were illegal, this prayer is denied.

A permanent injunction restraining the 1st defendant from continued administration of the estate of the late Charles Origa Futo Drani

[322] I presume that by this prayer, the plaintiffs want to restrain the 1st defendant from participating in any administrative

decisions concerning the estate or in further dealing with it. This prayer is granted.

Costs of the suit

[323] It is trite law that costs follow the event and the successful party is entitled to costs, unless the court shall for good reason otherwise order. Therefore, costs of the suit shall be paid by the 1st defendant.

Any other remedy that the court may deem fit

[324] It is not in dispute that a memorandum of understanding was entered between the 2nd defendant and the 7th plaintiff on 25th February 2020. A temporary injunction was issued by the court on 24th October 2017 restraining the respondents, their agents and servants from selling, alienating, mortgaging, disposing and or taking any action that would be detrimental to the interest of the applicants in the land comprised in Busiro Block 241, Plots 23, 35, 41, 42, 47, 48 and 50 situated at Nsekwa Musisi, pending the hearing and final disposal of this suit.

[325] The 2nd defendant testified that she was aware of the temporary injunction, but went ahead to enter into the memorandum of understanding (**Exhibit D1**). She testified additionally that she made sure that the 1st defendant agreed with the outcome of the said memorandum of understanding. Despite his claims that he was still administrator of the estate at the time that the said memorandum of understanding was entered, the fact is that he was no longer administrator of the estate when **Exhibit D1** was made. The High Court had revoked his powers as administrator on 11th July 2019 and granted the same to the 1st and 5th plaintiffs. Because the said memorandum was executed in contempt of the temporary injunction issued by the court, it is rendered null and void for illegality.

COUNTERCLAIM

[326] The counter- plaintiff /1st defendant filed a counterclaim against the 1st and 2nd plaintiffs/counter-defendants. The counter-defendants did not file a written statement of defence to the counterclaim. As a result, the counter-plaintiff prayed that this court grants the counter claimant an interlocutory judgment pursuant to Order 9, Rule 8 of the Civil Procedure Rules since the 1st and 2nd counter defendants failed to file a written statement of defence to the counter claim.

[327] **Order 9, Rule 8 of the Civil Procedure Rules** provides:

“Where the plaint is drawn with a claim for pecuniary damages only or for detention of goods with or without a claim for pecuniary damages, and the defendant fails or all defendants, if more than one, fail to file a defence on or before the day fixed in the summons, the plaintiff may, subject to rule 5 of this Order, enter an interlocutory judgment against the defendant or defendants and set down the suit for assessment by the court of the value of the goods and damages or the damages only, as the case may be, in respect of the amount found to be due in the course of the assessment”.

[328] The relief in the foregoing order can only be granted subject to Order 9, Rule 5 of the Civil Procedure Rules, which provides:

“Where any defendant fails to file a defence on or before the day fixed in the summons and the plaintiff is desirous of proceeding upon default of filing the defence under any of the rules of this Order, he or she shall cause an affidavit of service of the summons and failure of the defendant to file a defence within the prescribed time to be filed upon the record”.

[329] From the above authorities, the court can only grant the relief of an interlocutory judgment if the plaintiff filed an affidavit of

service of the summons and an affidavit of failure of the defendant to file a defence within the prescribed time on record.

[330] The 1st plaintiff testified that she had no knowledge about the counterclaim until she attended court on one of the days when the hearing of the case was scheduled. Notably, the record of proceedings does not show that summons to file a Written Statement of Defence were issued to the plaintiffs in regard to the counterclaim. It is also obvious from the record that there was no service of the said counterclaim to the opposite party.

[331] This court cannot grant an interlocutory judgment to the counter-claimant in the instant case where the counter-defendants were not duly notified about the counterclaim against them. Furthermore, apart from the evidence adduced during the cross-examination of the 1st plaintiff by counsel for the 1st defendant, where she explained her expenditure of estate funds, which evidence was not discredited, no proof was adduced by the 1st defendant to support the claims in the counterclaim brought against the 1st and 2nd plaintiffs. In effect the counter-claim was not heard and so, the counter-claimant will bear his own costs. He is solely responsible for his failure to properly prosecute his counterclaim.

[332] As a result, the plaint partially succeeds with the following orders:

- a) The 1st defendant is incapable of administering the estate of the late Charles Origa Futo Drani;
- b) An award of general damages amounting to 300,000,000/= to be paid to the plaintiffs by the 1st defendant;
- c) A permanent injunction restraining the 1st defendant, his agents and servants from selling, alienating, mortgaging, disposing and or acting to the detriment of the plaintiffs on the estate of the deceased;
- d) The memorandum of understanding entered between the 2nd defendant and the 7th plaintiff is null and void;

- e) The 1st defendant is liable to pay for the costs of the suit;
and
- f) The 1st defendant shall bear his own costs in the counterclaim.

I so order.

Susan Okalany

JUDGE
7/2/2022